

THE HOMELESSNESS PREVENTION PUZZLE:

ROLES OF LANDLORDS, TENANTS AND PROFESSIONALS
IN PREVENTING EVICTIONS AND PRESERVING AFFORDABLE HOUSING

by

PETER G. SHAPIRO

Bachelor of Science in Engineering
Tufts University, Medford, Massachusetts
(1982)

Submitted to the Department of Urban Studies and Planning
in Partial Fulfillment of
the Requirements of the Degree of
Master in City Planning

at the

Massachusetts Institute of Technology

May 1989

© Peter G. Shapiro 1989. All rights reserved

The author hereby grants to MIT permission to reproduce and to
distribute copies of this thesis document in whole or in part.

Signature of Author _____
Department of Urban Studies and Planning

Certified by _____
Donald A. Schön
Ford Professor of Urban Studies and Education
Thesis Supervisor

Accepted by _____
Donald A. Schön
Chairperson, MCP Program

MASSACHUSETTS INSTITUTE
OF TECHNOLOGY

AUG 03 1989

LIBRARIES
Rotch

THE HOMELESSNESS PREVENTION PUZZLE:

ROLES OF LANDLORDS, TENANTS AND PROFESSIONALS IN PREVENTING EVICTIONS AND PRESERVING AFFORDABLE HOUSING

Submitted to the Department of Urban Studies and Planning
on May 25th, 1989 in partial fulfillment of the
requirements for the Degree of Master of City Planning

ABSTRACT

Although Massachusetts has steadily increased its supply of new affordable housing throughout the 80's, the overall supply has dramatically declined during this same period. A rapidly rising housing market has driven an increasing number of landlords to evict their low income tenants in order to convert their units.

Steadily declining incomes among low income renters relative to other income groups has heightened this instability by widening the income gap between what landlords are charging and what tenants can afford. When the resolution of this instability enables both landlords and tenants to preserve joint tenure -- both stay where they are -- the conditions for preventing homelessness and preserving affordable housing will be maximized.

Whereas many landlords are responding to a rising housing market by operating to maximize profit only -- called "problem-causing" landlords -- some landlords who have a "dual-purpose" -- to both provide affordable housing and make a return -- resist the temptations of a rising housing market. What exists within their relationship are both stabilizing forces -- which keep the parties interdependent -- and room to negotiate -- which may be widened or contracted by how landlords and tenants manage themselves in response to the law, the courts, professionals, the state and to each other.

Two professional organizations -- Greater Boston Legal Services (GBLS) and a state Housing Services Program (HSP) whose work is presented, differ as to their strategies for helping to prevent homelessness and preserve affordable housing. Whereas GBLS primarily defends tenants against eviction and deters lawlessness on the landlord's part through legal and educational means, HSP provides counseling, education, technical assistance and mediation services to both landlords and low income tenants to assist them both to remain in their existing housing.

As an effect of interventions by these professional organizations, landlords and tenants may be likely to shift from dual-purpose to problem-causing mode or vica versa in ways that both impair and improve the conditions for preventing homelessness and preserving affordable housing. When GBLS defends tenants against problem-causing landlords, they may be likely to effect the land-

lord's shift into dual-purpose mode and to prevent homelessness. However, if GBLS defends against dual-purpose landlords without protecting these landlords' interests, they may be likely to shift into problem-causing mode and out of the business of providing affordable housing.

When HSP intervenes with landlords and tenants, on the other hand, they are less able to effect shifts in modes. They are less able to protect tenants from problem-causing landlords however, and should not fully intervene unless this is possible. HSP may instead help to widen the space for negotiation, if possible, and to allow each party to extend further. HSP may surface behavior issues of the tenant -- whose resolution may rebuild the landlord's confidence to stay committed to joint tenure.

HSP may go farther, furthermore, to "stabilize" tenants who need help in order for them to remain in private housing. Once agreements are achieved in which tenant's behavior must change, thus, HSP should be both caseworker -- to help them begin using 'self-help' services -- and probation officers -- setting limits, goals and consequences -- to help tenants become stable and break out of poverty and dependency cycles.

A new conception of a service system which these professionals may offer in conjunction with landlords and tenants is thus proposed.

Proposed Service Delivery System for GBLS and HSP

	dual-purp landlords	prob-causing landlords	dual-purp tenants	prob-caus- sing tenants
<u>Greater Boston Legal Services</u>	Play HSP role	Yes	Play HSP role	Play HSP role
<u>Housing Ser- vices Program</u>	Yes	conditional **	Yes	should do more moni- toring

** HSP should be involved here only when they can balance the power between landlords and tenants and can provide a non-coercive atmosphere of negotiation. HSP must be able to protect tenants if landlords try to manipulate the process to achieve their interests only.

ACKNOWLEDGEMENTS

Many individuals have contributed to my learning as part of this thesis exercise. I have some for whom offering them thanks is but a tempered expression for my appreciation and gratitude.

I offer thanks to:

First, I thank my principal 'informants' without whom conducting my research would have been a great deal more difficult.

Carol Burner and Helena Chaikins, for their patience and endurance in fielding any and all of my endless questions about Tri-CAP Housing Services.

Josh Jacks, who has remained as a steady and supportive mentor for my professional growth in the mediation field.

Dick Bauer, whose brilliance as an attorney and an educator for tenants provided much learning for me both as his informal student and as a mediator who worked with him.

Second, I thank John Dalton, Assistant Clerk Magistrate of Quincy District Court, for the opportunity he provided for me to mediate summary process cases (landlord/tenant disputes) over the summer of 1988.

Third, I thank my committee:

Langley Keyes, for his persistent challenges to my knowledge of the system of homelessness prevention, and for his marvellous recounting of Shakespearian anecdotes to cast even the most difficult moments in a poetic light.

Suzann Thomas-Buckle, for her tremendous powers of listening, reframing, editing, conceptualizing and simply staying the course as I underwent all the traumas of being a student.

Don Schön, for his mastery at asking the unasked questions, at throwing my latest conceptualization thinking to the loving winds of change and growth, and for all his insights.

And fourth, I thank my friends:

Jack Macy and Richard Stern, for their tremendous patience with my long hours and left dishes as my housemates and trusted friends. Thank you both for 'allowing me' during this time.

Blair Gelbond, for his respect for my efforts, and his high regard and care for my well being at all times.

And Linda Kramer, who remained supportive and loving, and who showed her caring throughout.

TABLE OF CONTENTS

Page No.

PART I: FRAMING THE PROBLEM

Chapter #1:	The Problem Statement.....	7
Chapter #2:	On which type of landlord will I be focussing?.....	19

PART II: PRESENTATION OF RESEARCH RESULTS

Chapter #3:	Setting the Stage.....	29
A.	Introduction.....	29
B.	The limitations of my research.....	31
C.	The cast of characters.....	34
D.	Discussion of the characters.....	37
i.	Who are the landlords?.....	37
ii.	Who are the tenants?.....	39
Chapter #4:	Research on the relationship between landlords and tenants....	41
A.	The distribution of power within the relationship between landlords and tenants.....	41
B.	The characteristics of landlord/tenant interactions.....	43
C.	How do landlord/tenant relationships become unstable?.....	46
i.	The stages of disputing and the landlord's response to instability.....	46
ii.	The tenant's response to instability.....	50
Chapter #5:	What happens when eviction becomes a certain prospect?.....	56
A.	A continuum of methods	57

B.	The role that the law and the courts play within the relationship between landlords and tenants.....	59
C.	How do professionals become involved?...	64
i.	The Greater Boston Legal Services Frame.....	65
ii.	The Housing Services Program Frame	71
D.	The response by landlords and tenants to the professionals.....	77
i.	The impact of the Housing Services Program.....	77
ii.	The impact of Greater Boston Legal Services.....	79
E.	The role of the Chapter 707 state Rental Assistance Program.....	84
PART III: TOWARD AN IMPROVED SYSTEM FOR PRESERVING JOINT TENURE		
Chapter #6:	Summary of Findings.....	88
A.	Discussion of key findings about the balance of power between landlords and tenants, characteristics of their interactions and their response to instability.....	88
B.	Discussion of key findings about the role of the professionals.....	94
Chapter #7:	Matching the frames of the professionals with the relationship between landlords and tenants.....	108
Chapter #8:	Conclusion and Recommendations...	122
A.	Conclusion.....	122
B.	Recommendations.....	124
Appendices		
1.	List of interviewees.....	139
2.	Massachusetts Approach to Homelessness: A Continuum of Services; Flow Chart.....	141
Bibliography.....		142

PART I: FRAMING THE PROBLEM

CHAPTER 1: THE PROBLEM STATEMENT

"In the 1930's poverty was the unemployment line, it was a nation down on it's luck. In the 60's and 70's it was the crumbling ghetto, a separate place that a Great Society thought it could reach out and repair. Now homelessness has crossed one of those invisible lines of American politics. The homeless are¹ everywhere."

We see homelessness quite visibly in overfilled shelters and in people sleeping in public buildings, abandoned cars, on the streets or down alleys. More subtly, it appears when families double up for the long haul or when single welfare mothers fall behind on their rent to feed their children. In recent years, the characteristics of the homeless have changed with young married couples and their children entering the ranks alongside the elders.

State officials claim they have never tackled anything so complicated as the problem of homelessness. "The countervailing forces, political whims, vulnerability to media blitzes, budget issues, the basic psycho-social issues, etc. have created a very complex constellation of problems," says Judy Reilly, Deputy Assistant Commissioner for the Department of Social Services (DSS). To resolve their root causes, Carol Johnson, Director of Homelessness Services for the Department of Mental

1: New York Times article dated January 29th, 1989 entitled: The Homeless at the Heart of Poverty and Policy: By Michael Oreskes and Robin Toner

Health (DMH), calls for the creation of "a department of family life support that focusses on child development, personhood education, parenting development etc." Having become the poverty symbol of the 80's, homelessness has clearly refocussed the debate about poverty throughout the country.

In Massachusetts, where I will be focussing my story, a few key facts point to the causes of homelessness.

- Since 1970, the median rent in Boston has increased by 329%. Currently in only 8% of its private housing units is the rent as low as \$200/month which is the amount that a family of three on AFDC (Aid to families with dependent children) can afford.

- Since 1980, there has been an 18% increase in the number of poor female-headed families in Massachusetts.

- Although the supply of subsidized family housing has increased substantially (20%), the supply of affordable units in 90% of the Commonwealth's total unsubsidized housing stock has declined dramatically.

Although Massachusetts has significantly increased its supply of new affordable housing in the 80's, the overall supply has steadily declined during the period. A combination of rapidly rising rental rates and declining incomes among this low income group relative to other income groups has caused this increase in evictions.

Once these tenants are evicted, furthermore, they face very

2. The issue has engendered much support from the public. Politicians state that this growing awareness has provided a wedge for them to win voter support for increased services that simply talking to them about poverty does not).

3. These facts were presented by Dukakis in his FY '89 Comprehensive Homeless Assistance Plan 2.

limited opportunities to relocate; and, their vacated unit will
no longer remain affordable. Thus, preventing low income
tenants from being evicted is critical to preventing homeless-
ness. And, preventing landlords from selling their units will
also preserve the stock of affordable housing.

Although market factors and the law govern the 'external
affairs' between landlords and tenants, their 'internal affairs'
are governed by interactions within their relationship. These
include: offering and receiving help, making promises and commit-
ments; along with threatening, harrassing or otherwise gesturing
in ways which may escalate conflicts. It is this exchange of
interactions and actions taking place between landlords and
tenants that I will call the 'relationship between landlords and
tenants'. To make explicit how landlords and tenants relate, I
will examine their interactions as a 'culture' -- of values,
norms, beliefs and assumptions.

If their relationship begins to break down -- the income gap
grows too large, or other issues cause too great a divergence,
what the relationship will become is 'unstable'. The parties
will begin to undergo what Felstiner, Abel and Sarat call
the 'transformation of a dispute'. In this process, the

4. This is unlike situations in other parts of the US says Ed
Shanahan, managing director for the Rental Housing Association of
the Greater Boston Real Estate Board. Shanahan discusses the
effects of a 'soft' market in Texas where "[l]andlords advertise
6 months of free laundry service and 2 months of free rent to
lure people into their units."

5. Felstiner, William L.F., Abel, Richard L. and Sarat, Austin.
"The Emergence and Transformation of Disputes: Naming, Blaming
and Claiming..."

parties will move through problem definition toward some process of dispute resolution to achieve an outcome. If both parties stay where they are, they will preserve what I will call 'joint tenure'. Otherwise, the parties will resolve their dispute either by one party or both leaving. In this thesis, I will be investigating how the way in which landlords and tenants manage their relationship affects the conditions for preserving joint tenure.

What landlords and tenants may 'be able to' or 'choose to' be, in order to preserve joint tenure, is 'flexible'. Each here is open to and interested in the other's situation, ready to cooperate and willing to negotiate. When landlords and tenants are 'flexible', they will 'extend themselves'. They will allow for the time the other party needs in order to rehabilitate him or herself within the relationship. Landlords will hold out without collecting rent, the length governed by their confidence of recouping some or all of it. Tenants, as well, will tolerate minimally functioning bathrooms for some time, for example, before calling on or citing the landlord to make repairs. I will call what this is -- that 'adjusts' within their relationship -- their 'negotiating space', or 'negotiating room'. How landlords and tenants manage themselves in response to the law, the courts, professionals, the state, and each other serves either to 'widen' or 'contract' this negotiating room.

A range of professional services has a significant impact on both increasing and decreasing this negotiating space. I will discuss and assess the approach of two organizations, each being

a central representative for a primary type. One is a program within the Division of Neighborhoods and Economic Opportunity under the Executive Office of Communities and Development (EOCD) called the Housing Services Program, (HSP). The other is Greater Boston Legal Services (GBLS).

The HSP's purpose is to "assist both low income tenants and landlords to remain in their (private) housing stock" by providing the following services for both landlords and tenants: one-to-one counseling, technical assistance, workshops and mediation. The GBLS's purpose, on the other hand, is primarily to "defend tenants against eviction and to deter lawlessness on the landlord's part" by educating tenants and invoking the law. GBLS provides free civil legal assistance to low-income people, and offers a full range of advocacy options, from advice to litigation, depending on the needs of the particular case.

Because the rising housing market has driven an increasing number of landlords to upgrade their units themselves or to sell, which has caused their rents to increase beyond the means of low income tenants, the negotiating room between landlords and tenants has steadily contracted throughout the 80's. Under these circumstances, what has been widening, is what I will call the 'income gap' -- the difference between what landlords are charging and what tenants can afford. When this income gap becomes too wide, landlords will be driven to evict and will

6. EOCD Housing Services Program 1987 brochure

7. GBLS Housing Unit Plan: 1988

succeed unless the tenant can successfully invoke the law or negotiate in order to prevent it. (Although there are various other reasons why tenants might vacate these units -- fires, arson, condemnation by the Board of Health, demolition etc. -- it is primarily either in anticipation of eviction or by being evicted that low-income tenants leave).

Certain landlords, though, resist these market temptations because they are also committed to providing affordable housing. One of these landlords told me, for example, that "every four years or so a big bad condo converter makes a deal that's quite difficult to turn down. I sit down with my accountant and then decide I like the business enough and know I'm doing a service by keeping low-income tenants in there, so I don't sell." I will name these landlords -- who are committed to both providing affordable housing and making a return -- 'dual-purpose' landlords.

These landlords, I will argue, will take on problem characteristics in response to tenants who they believe are disrespecting their needs and interests, either through their own initiative or GBLS's. These landlords will shift into a mode I will call: 'problem-becoming'. They cease being flexible because tenants have stopped 'reciprocating' -- paying the rent or arranging for repayment if they fall behind, preventing the property from being damaged within reason, managing domestically so as not to produce sanitation problems, and generally not intruding on the landlord's 'decent enjoyment of the premises'.

I distinguish these 'dual-purpose' landlords from so-called

'problem-causing' landlords -- whose sole view of housing is as a vehicle to maximize profit. 'Problem-causing' landlords, for example, will acquire property specifically to turn it over most rapidly for high profits. They are known to neglect maintenance -- keeping bathrooms running, stopping rooves from leaking, replacing appliances when they wear out. They are also known to demand unreasonably high rent increases, sometimes to become verbally and physically abusive, and altogether to make life miserable for tenants. This includes: being absolutely inflexible in response to tenants' needs and proceeding to evict them if necessary to best protect their interests only.

If HSP attempts to resolve disputes that involve problem-causing landlords, even when the tenant is properly defended, they may be unable to protect these tenants. Thus, HSP should typically refer these cases to GBLS. Against these problem-causing landlords, I argue, we must protect their tenants, either by -- defending them legally using GBLS, regulating them, or by helping these tenants to acquire their properties when the landlords sell -- in order to keep their rents affordable.

GBLS must also drive these problem-causing landlords away from private eviction actions as much as possible into HSP-type programs where professionals may help the parties balance the power. When tenants have 3rd party assistance and are legally informed within a professionally-managed negotiation arena, they will likely to be more effective in protecting their tenancies than when alone with their landlords, I believe. These problem-causing landlords may begin here to behave like dual-purpose

landlords.

Just as there are 'problem-causing' landlords from whom we must protect tenants, there also are 'problem-causing' tenants from whom we must protect dual-purpose landlords. According to Michael Stegman, investors call these tenants the ones "who either intentionally or otherwise abuse the property, are not regular rent payers, or disturb other tenants [or landlords] in the structure." "According to landlords," Stegman tells us, "the bulk of their serious problems are caused by only a few [of these problem-causing] tenants." ⁸ These tenants regularly resist any social services assistance and refuse to comply with basic legal obligations or demands placed on them by their landlords, including paying the rent.

In contrast to problem-causing tenants, however, 'dual-purpose' tenants will make sure to protect their interests, but will also attend to meeting the basic requirements of their landlords as they are capable; and, they will use services constructively to aid their doing so if necessary.

Just as dual-purpose landlords may 'shift' -- and turn into 'problem-becoming' landlords in response to 'problem-causing' tenant behavior, tenants may also 'shift' -- and turn into 'problem-~~becoming~~' mode -- often (but not necessarily) after having been assisted by GBLS. For example, they will begin to make legal threats or stop paying rent without just cause; or they'll disrespect the other needs of the landlord. Although GBLS undoubtedly may be proceeding in a legally ethical manner,

8. Stegman, Michael A.: Housing Investment in the Inner City: The Dynamics of Decline: A study of Baltimore, MD, 1968-1970 (162,3)

the tenant's behavior may thus shift as a result into a legally unethical mode. (I will define what this means throughout this study through descriptions by landlords and professionals).

If dual-purpose tenants become mistreated by problem-causing landlords, on the other hand, they should turn into problem-becoming mode. They should access legal assistance, organize, and proceed in such a way that these landlords do not succeed at the expense of these tenants.

When GBLS defends problem-causing tenants from being evicted by dual-purpose landlords, I will argue, these tenants may win temporarily by extending their tenancies a few months or winning compensation. They will lose far more significantly, however, by driving these landlords more strongly towards eviction and causing their commitments to shift away from providing affordable housing. When GBLS immediately frames their role only as to defend tenants against eviction -- without considering that these dual-purpose landlords may still want to be 'flexible' and to preserve joint tenure upon conditions of reciprocity -- they may be likely to cause this same shift to occur.

For both these scenarios, I will argue, GBLS should play a role similar to HSP -- to educate, help tenants define 'realistic' short and long term options, and to help them achieve agreements to which the landlord will commit. If GBLS does not do some kind of screening in order to protect these dual-purpose landlords from these tenants, I am arguing, we will lose not only these landlords, but the larger dual-purpose landlord population

as well. This population will withdraw their commitment to providing affordable housing or organize themselves to increase their protections from GBLS and low-income tenants.

There is an important distinction to be made about the problem-causing behavior of tenants who are in poverty. There are 'problem-causing' tenants who on one end of a continuum are 'victims' and those on the other end who are 'perpetrators'.

Victims include tenants whose disadvantaged upbringings 'dis-
able' them from being able to function well in private housing.⁹
Perpetrators include tenants who repeatedly damage their units
and threaten to sue landlords if they press charges.¹⁰

These perpetrators really are victims who become perpetrators because they have been quite victimized themselves in earlier years. The sources of their victimization result from being and having been -- of minority status, poor, ill-educated, ill-nourished and ill-loved. For both these perpetrators and victims, it is clear that we must improve our city and state systems as well as society-at-large to help them break out of their poverty and dependency cycles. We 'can and should do more' to help them, until some point.

The strategies that professionals like Jeanne Gould use at the Department of Public Welfare (DPW), which are called

9. Although I refer only to tenants here, there are 'victim' landlords -- who skimp on maintenance or spend the tenant's security deposit attempting to maintain affordable rates even when to them doing this is unaffordable.

10. There also are 'perpetrator' landlords -- who disrespect the need for tenants to have the basics in their units, and raise the rent at an unreasonably high rate. Tenants, though, are more prone to show these victim ---- perpetrator characteristics because of having been impoverished, which inclines individuals to be polarized such as this.

'stabilization' services, I will argue, is 'doing more as we should'. Gould's work extends 'helping' about as far as the state can go.

To help tenants who have just previously been homeless to become and to remain stable in their new housing, Jeanne 'contracts' with them. What she provides on her end is case management -- counseling clients to hook them into services. What the tenants must do in response is to enter into and to uphold agreements that 'obligate' (and encourage) them to increase their participation with self-help services among other self-improvement activities. Jeanne will also provide probationary services -- setting goals, limits and consequences -- to help clients become more responsive to helping themselves. This is all designed to maximize the incentives for tenants to break out of their poverty and dependency cycles. Much of this approach to stabilizing tenants, I will argue, HSP can adopt for working with those in the "at-risk" category to prevent them from becoming homeless.

However, if perpetrators continue to operate 'as is' despite whatever stabilization services and resources are offered, we must establish conditions on which services may be continued. The state should make extensions of their benefits conditional on participation in self-help trainings to provide 'carrots' -- to entice them to take part. A HSP worker may play a role here as a 'broker' between tenants and the state -- to advocate for the tenant to receive continued services on the basis of the tenant meeting the HSP's expectations for progressing in self-help

development.

The following matrix shows when and how I believe that HSP and GBLS should be involved.

Proposed Service Delivery System for GBLS and HSP

	dual-purp. landlords	prob-causing landlords	dual-purp. tenants	prob-caus- ing tenants
<u>Greater Boston Legal Services</u>	Play HSP role	Yes	play HSP role	play HSP role
<u>Housing Services Program</u>	Yes	Conditional **	Yes	should do more mo- nitoring

What I propose is a new conception of a service system which these professionals may offer in conjunction with landlords and tenants.

** HSP should be involved here only when they can balance the power between landlords and tenants and can provide a non-coercive atmosphere of negotiation. HSP must be able to protect tenants if landlords try to manipulate the process to achieve their interests only.

CHAPTER 2: ON WHICH TYPE OF LANDLORD WILL I BE FOCUSING?

By being motivated to make a profit, landlords have been able to provide housing for low income tenants. As one landlord stated it, "As the landlord develops something for desire of profit, he is also creating good things along the way." "If we hadn't been entitled to profits [for our efforts], we wouldn't have been able to stay in the affordable housing business," said another.

Many landlords, though, are not committed to providing affordable housing. The Mayor of New York City, Robert Wagner, once stated that the inner city housing problem was caused by the "slumlord, that small body of landlords who are out to squeeze every last dollar out of their property as quickly as they can, regardless of the consequences in terms of human lives, suffering and sickness." We hear reports about these types of landlords daily. To control them, we must invoke the law to defend tenants, and restrict to some degree their abilities to convert affordable housing into housing at high rental rates.

I present the following typology, suggested to me by Jean Charn, Director of Jamaica Plain Legal Services, of landlords that she has found in her work currently.

TYPOLOGY OF LANDLORDS

Developer/Converter Type

- Can be large or small
- Purpose is to buy at low price, to convert to luxury, condo or coop as quickly as possible and then to sell at high price
- Puts very little money into maintenance
- Often does a lot of work by themselves
- Occupies a growing share of the housing market

Old-time Slumlord

- Minimizes maintenance expenses
- Avoids legal requirements
- Reaches limit of 'milking' the unit and then abandons it to the city
- Very few still around because market doesn't allow it. (City will catch up with them too quickly).

Longterm Residential mixed income landlords

- Oriented to long term appreciation, not short term gain

Maintains and services units
-Uses 707/Section 8 vouchers

- ability to provide affordable housing will decrease if state funding drops off
- Divided among two groups:
 - * Those who are looking to let go of low-income end of business, direction is to provide more luxury units
 - * Those who are motivated to keep mixed income variety of housing

Owner-Occupier or 'small' landlords (owning < 5 units)

- Owns one or a few properties only
- Buys property to meet own housing expenses, expects to pay mortgages with rental income
- Divided among two groups:
 - * those looking to buy their next home who want to profit by raising the rent and converting the unit.
 - * those who don't keep up with market rental rates, and are looking mostly to cover costs, interested in tenant relationships and in preserving affordable housing

Landlords do not stay static in each category. They shift across them depending on the market and their motivations. High profits available from condo conversions throughout the 80's, for example, caused many landlords to switch out of affordable housing. GBLS's success has been in defending these tenants by fighting in court or by forcing landlords to negotiate with their tenants.

Although the rising housing market has accelerated this shift away from affordable housing, GBLS has stopped some of these landlords from succeeding and deterred others from trying. In this thesis, I will be focussing on those 'dual-purpose' landlords within the owner-occupier and long term residential categories who are committed both to making a return and to providing affordable housing. Within the longterm residential category, furthermore, I will also limit my focus to those who own and/or manage 75 units or less. By owning less than 75 units, generally, landlords are able to manage their businesses -- collect monies, lease the units, resolve problems and conduct personal relations with the tenants -- themselves.

Is it possible for a dual-purpose landlord to survive? Chapter 707 and Section 8 certificates and other government supports have helped by guaranteeing for some landlords a sizable proportion of their income. In a wider sense, Roger Krohn tells us, a "local-amateur" economy exists in most cities, whose landlords are not motivated solely by high returns. These

11. Krohn, Roger G., Fleming, Berkeley, and Manzer, Marilyn. The Other Economy: The Internal Logic of Local Rental Housing Toronto, Canada: Peter Martin Associates Limited. 1977

landlords "minimize external financing, manage and maintain buildings themselves and avoid cash expenditures in several other ways," says Krohn. Long time owners often also carry small if any mortgages and can thus transfer their low overheads into low rental rates.

Many also provide affordable housing, Krohn argues, because of the value they place on their relationships with their tenants. Building these relationships can provide multiple benefits, Krohn tells us, including "personal work satisfaction, kin solidarity [with their tenants], friendship, better housing, a secure social place, and in some cases, a higher income." George Sternlieb, who also studied the composition of landlords, found among the owners of tenements in Newark and New York City "housewives, craftsmen, businessmen, and retirees, in addition to ¹² full-time real estate professionals" who would likely seek benefits through their relationships with tenants. There is much evidence that this type of landlord also exists throughout the metropolitan Boston area.

Why focus on these 'dual-purpose' landlords?

Within this typology, I have identified two types of landlords -- dual-purpose and problem-causing landlords -- each of which require different types of interventions in order to protect joint tenure. Against those problem-causing landlords who operate legally but strictly to maximize profit, it is quite difficult to protect their tenants without the help of non-pro-

12. Sternlieb, George. The Tenement Landlord. New Brunswick. Urban Studies, Rutgers, The State University.

13

fits or regulations like rent control on top of the role of GBLS. Against those problem-causing landlords who also neglect basic responsibilities like maintenance and who proceed illegally to evict, the role of GBLS may be sufficient.

14

By focussing on dual-purpose landlords, I do not mean to imply that we need not increase our efforts against problem-causing landlords. Because researchers have focussed much more, I believe, on how to deter the problem-causing landlord's progress, I will focus instead on how best to allow dual-purpose landlords to succeed. I also believe that discovering better strategies for protecting their interests will provide some missing links for understanding how better to preserve joint tenure. There are four primary reasons why we should understand better how dual-purpose landlords operate and how best to protect their interests in order to prevent homelessness and preserve affordable housing.

1) They control a reasonable proportion of the housing stock in the Metropolitan Boston area.

Jack Hall, a manager of Boston's Rent Equity Board who deals daily with landlords, presented a rough picture of how many

13. Non-profits may either advocate, to keep the issue of the negative practices of the landlords in the public eye, or they may help tenants to form cooperatives to buy out the landlord when he sells. They may then sell again if they need to, but be able no matter what to remain in their units at affordable rates.

14. GBLS's success here depends on how the courts will operate. Assuming the landlords' violations are 'significant enough' and the judge is considering both parties equally on their legal merits, likely GBLS will be able to successfully defend these tenants.

dual purpose landlords own what proportion of units in Boston.

Hall first says that: (Figures are approximate)

1. 5000 landlords control 75,000 units in the city of Boston.
2. Of these 5000 landlords, 800 control 50,000 of these 75,000 units.
3. The remaining 5000 landlords control the remaining 25,000 units.

Thus, 800 'large' landlords (or 14% of all registered), average 62.5 units each and control two-thirds of all registered units. 5000 'small' landlords, (86% of all registered), average 5 units each and control one-third of all registered units.

Hall then says that "so many landlords have not registered their properties that he doesn't want to know about it" -- meaning that the proportion of unregistered-to-registered landlords is quite high. He also says that the larger the landlord, the more likely that he'll be registered. Ed Shanahan, Managing Director of the Rental Housing Association of Greater Boston Real Estate Board, confirms this, as he states: "If your business is greater than 75 units, quite likely you'll be registered recognizing the legal risks and consequences of not doing so." Among these unregistered units, thus, the 'small' landlords control a much greater proportion than that which they control among the registered units. I estimate that this raises the proportion of units small landlords control from one-third to one-half, or 50%.

Distinguishing what proportion 'within' this proportion are dual-purpose is quite difficult to do because these landlords shift across categories. Because the market has been so strong

in recent years (until 1988), many more small landlords have shifted to 'profit-only' than is typical. When these landlords now assume expensive mortgages having bought at inflated prices, they can no longer be able to maintain affordable rental rates. I estimate that this brings the proportion of control small dual-purpose landlords have over the city's housing stock from one-half down to one-quarter, or 25%.

I include longterm residential landlords, (who are small enough to be able to manage their own properties = less than 75 units), in my subgroup. They are typically more stable in response to market swings and understand better how to use the law, yet are still prone to the pressures to gentrify. When combined with the dual-purpose small landlords. I estimate they bring this one-quarter figure back up to one-third. I conclude that about one-half of the housing stock is controlled by these dual-purpose landlords.

2) If these dual-purpose landlords sell, however, we may lose a significant amount of affordable housing.

First, we lose landlords who are committed to providing affordable housing. As one landlord stated, "I recognize that these tenants are having a hard time, and I do whatever I can to help them." These are the landlords who, as one told me, "feel discouraged because tenants do have legitimate problems and deserve to have affordable housing."

Second, it's likely if that unit is sold that it will not remain affordable. Keeping these landlords in business safeguards us to some degree against gentrification. As one landlord put it, "If I do sell, there goes good housing stock for low-in-

come people." Developers will be likely to buy up these units and will then charge rents that are unaffordable to low-income tenants.

3) The small landlords are at greatest risk of not protecting their interests when tenants defend themselves

Small landlords are most likely to be the least well-organized among all types to protect themselves from well-defended
15 tenants. Rather than to first make sure they are well-defended legally after which they may make concessions and negotiate knowing that their defenses are in place, they instead private tell their tenants to go, hoping not to have to proceed legally. If tenants explore and then act on their legal options, they may be likely to get the case dismissed and also possibly win
16 financial compensation.

Landlords will typically respond by becoming even more inflexible and adversarial, and then often make further illegal moves which may compound the problem until they figure out how to use the law. What allows landlords and tenants to be flexible is when they are well-defended legally such that they can make

15. Many say it's the landlord's own fault that they don't know how to use the law, but small landlords counter by highlighting the difficulties of doing this. An example Hall gives of the difficulties small landlords face in keeping up with the law is that the rent control regulations have been amended so many times the past four to five years that even the rent board staff can't keep up with them. This argument can be extended to non-regulated situations.

16. This often works in the converse -- in which the tenant is afraid of the landlord and simply leaves when told to keep the conflict from escalating.

concessions knowing they can invoke the law if necessary.

The longterm residential dual-purpose landlords, in contrast, are typically much better educated about how to use the law to preserve joint tenure. These landlords typically have discovered workable strategies to be able to balance invoking the law and being flexible.

4) Small landlords are less financially stable than the larger ones

These are the landlords who sometimes wish they were able to 'carry' a rent-delinquent tenant because they value the relationship but are less flexible because they need tenants' rents to pay their mortgages. Although the larger landlords can more easily afford to evict tenants, they also don't depend as much on each tenant's monthly rent and may more easily arrange to 'carry' tenants based on their agreement to repay. Understanding how small landlords currently manage this bind and what more can be done will also help resolve the overall problem.

In sum, small, dual-purpose landlords are generally less sophisticated in using the law and less financially stable, yet they provide a significant proportion of affordable housing especially when combined with the dual-purpose longterm residential landlords. The associate director of Massachusetts Tenants Organization, Michael Fogelberg, agrees that when the market is an obstacle to the success of small landlords, the

17. It's important to note that a landlords' or tenants' awareness of legal rights does not necessarily mean they will not employ them as a first resort.

state should provide more resources to help them protect their businesses. I agree with this yet I argue that we have to do more. We must understand how their 'relationships' with tenants affect their ability⁵ to stay in business and what more might be done to protect them in ways that also prevent tenants from being evicted. Understanding these effects and identifying solutions will help us improve our ability to preserve joint tenure.

PART II
PRESENTATION OF RESEARCH RESULTS

CHAPTER 3: SETTING THE STAGE

A. Introduction

In this thesis, I have conducted a qualitative exploration into the culture within which landlords and low-income tenants interact and the role that professionals play. I have both pursued an anthropological investigation of how the issues of instability and eviction are addressed, and have also formulated an argument about how HSP and GBLS could improve their service delivery to better serve the goals of preventing homelessness and preserving affordable housing.

I have interviewed a number of landlords and tenants, professionals who work in the public, private and non-profit sectors, city and state officials and others to do this research. I engaged these people quite candidly on the issues of how landlords and tenants manage their relationships, how professionals interacted, what factors disrupted joint tenure and how they resolved their disputes, especially about the issue of eviction. Because I was interested to know how landlords and tenants faced these issues, I interviewed ones who had just faced instability within their relationships that escalated to encompass the issue of eviction.

As I began this research, I set out to understand better how landlords and tenants managed a generic tension -- between what they thought 'should' happen, and what 'ended up' happening

because of their 'circumstances' -- including the influence of professionals. Unable to pay the rent (or other expenses), how if at all might a tenant factor in the landlords' 'fair claims' to it, for example? And given the difficult financial and accompanying psychological crises typically facing tenants who've become rent-delinquent, how might a landlord weigh this against his other business considerations.

What became immediately apparent, as I listened, was that within the relationship between landlords and tenants lay a culture -- of norms, beliefs, values, philosophies, and rules -- expressed through specific language and terms, and regular behaviors. As part of this culture, landlords and tenants negotiated in order for each to meet their needs and interests. Interviewing people dealing with eviction surfaced this culture more clearly, I believe, than if I had selected landlords and tenants in another way. By having addressed this issue, furthermore I believe, landlords and tenants discovered whatever creativities and flexibilities they do bring to the relationship and the role the relationship itself plays in preserving joint tenure.

How each responded when I first asked them to discuss what 'did' happen, what 'should' happen and why the difference (if any), -- was quite different. Landlords discussed the satisfactions of providing affordable housing. They also discussed their need to receive rent and to not be disrupted by tenants' lifestyles. When these weren't met, landlords discussed norms -- how should government respond, what should tenants do, and what

should the landlords responsibility be towards them.

What tenants emphasized more were their 'circumstances' -- being unable to get daycare or a welfare check, utilities being shut off, no food in the kitchen. Their feelings came through clearly -- feeling harrassed and confused, afraid of their landlords, worried about the kids, upset with themselves. They talked less about 'fairness' or what 'ought' to happen, to landlords let alone to themselves, I believe, because of their circumstances.

Hearing landlords and tenants discuss their situations, I began to posit that the way they managed their relationship affected quite significantly their ability to negotiate -- in ways in which both parties became satisfied. Not only did the market or government funding influence this ability, but issues such as -- accountability to agreements, honesty and upfrontness, respect for the other party -- as well played a role. The result was that the central focus of my research began to revolve around what 'the relationship between landlords and tenants'¹ had to do with preserving joint tenure.

B. The Limitations of my Research

There are a few key limitations to the research I conducted.

1. Because I limited my research only to those parties who received professional services and hence did not reach that group of landlords and tenants who resolved their disputes privately, I have missed studying an important group for understanding how landlords and tenants manage the issue of eviction. In this

group, which many believe is much larger than that which does access services, landlords and tenants will be much more likely to treat each other worse and thus illustrate the kind of behavior which professionals must learn how to respond more effectively to. To do this research requires much more time spent within neighborhoods playing an anthropological and a detective role to build an empirical picture of how indigenous patterns of dispute resolution occur.

2. Because of my time constraints, I was able to elicit the stories of only those for whom it took minimal effort to be able to do so. Hence, I was not able to talk but for a few minutes with landlords and tenants who I have labelled as 'problem-causing'. By hearing only through secondhand sources how these problem tenants and landlords behaved, I fell prey, no matter how 'neutrally' I phrased my questions, to receiving more of a biased report about them and hence of their "own voices" (Gilligan, 1982) than I wished.

To have been able to have talked with them, I believe, I would have needed to have taken much more time (and possibly needed more skill) to carefully build rapport with them so they could trust me, afterwhich they might then begin to tell their stories. I also believe that problem-causing landlords and tenants are least likely, naturally, to be willing to discuss how they operate because their practises sometimes breach ethical standards. I faced an additional bind with the tenants because many of them had been evicted and were unreachable by telephone or letter.

3. I talked only with those landlords and tenants whose relationship had recently undergone a threat to the tenure of one or both parties. I am limited, thus, in being able to speak about how landlords and tenants 'typically' interact.

4. I did not do any cross-comparison. Due to time constraints, I was not able to interview tenants and landlords who used GBLS and HSP in other regions in order to compare and test my results.

Thus, I was not able to learn about the "worst" cases on which many believe we must focus the most attention in order to best prevent homelessness and preserve affordable housing. I was also unable to have any substantial conversations with those problem-causing landlords and tenants whose behavior most threatens joint tenure and about whom professionals need to learn a lot more in order to resolve these housing issues. I did not talk with those landlords and tenants who were not facing threats to their tenure and thus don't have a base from which to understand how 'differently' they behave when they do face threats. And, I didn't compare my results across regions to test how much the characteristics of that region -- it's economics, politics, population demographics, etc. -- may have biased my results.

What I was able to learn was that the underlying culture of landlords and tenants was consistent across my characters as illustrated by a number of themes that emerged. I believe, furthermore, that the population I did interview was more aware of when they would be flexible and how else they could extend themselves to the other because they had just undergone a threat

to their stability. What the characteristics of my sample have provided, I believe, is a highly appropriate population for a story about preventing homelessness and it's threats.

C. The Cast of Characters

The Landlords (The names of these landlords have been changed to protect confidentiality).

1. James Boulder: A longterm residential landlord who has been in business for over 30 years, James has managed anywhere from 70-200 mixed income units over his career, a portion of which he's owned. He had just completed an eviction process in which his tenant eventually left on court day.

2. John Swimmer: Owning about 30 units each renting at \$650/month, Johns' rents are affordable enough that 60% of his calls come from Chap. 707/ Section 8 tenants. John has been in business for over 15 years. He had just won a judgement against a tenant who was represented by GBLS. Total cost was: \$2500 unpaid rent, \$1000 legal fees, \$1800 code violation = \$5300 altogether.

3. Len Simon: Works as administrator for low-income public housing projects statewide. Has two daughters, owns two units, did all the improvements himself. Had just negotiated with GBLS attorney for tenant (Jini Fisher) to move out after five month process including two court appearances and failed mediation effort. Total costs were: \$2500 in rent, \$800 in code violations, \$6000 in renovations and an additional 125 person-hours to repair damage.

4. Ellen and Bill Heckler; Ellen works as a bank tender and Bill as a high school driving teacher. They have one child. They own two properties and have rented mostly to section 8 tenants. They had just won an eviction case on nuisance grounds -- excessive disturbances through parties and fights -- where GBLS represented the tenant. The tenant was arrested twice while on the property. Total costs: \$1600 unpaid rent + legal fees.

5. Frank Kessler: Works as a middle manager in a computer firm. Owns one rental property. After tenants had fallen a few months behind in rent for second time, Frank used Tri-CAP mediation services to resolve his issues. The tenant remained.

6. Daniel O'Shay; Owns two buildings one of which he rent. Married with two kids. Works as an architect. Attempted to resolve nonpayment case Laurie Miller through mediation but ended up evicting through court action.

7. Pam Brimmer; mother is Cecilia Billona who's owned two rental units for about 20 years. Pam recently took over the landlord management because of her mother's ill health. Just completed 10 month eviction process where tenant received GBLS representation. Spent \$10,000 in unpaid rent, \$5000 as settlement for moving, and \$1000's to repair damage plus over \$5000 in legal fees.

8. Renee Coles: Has owned two units until recently. Sold one, and will now sell the other. Renee has used Tri-CAP's mediation and counseling services for a number of tenants.

9. Sam Plione: A first generation immigrant was Italy, Sam works as a small business accountant and has two kids. He has owned a 30 unit single room occupancy property until recently. Sam has used Tri-CAP's services on a number of occasions.

The Tenants:

(The names of these tenants have been changed to protect confidentiality).

1. Joan Bennis; Single mother of one; Section 8 tenant living in EOCD-funded private housing property. Received GBLS assistance to successfully prevent landlord from suing her for nonpayment of rent increase (which was illegal according to EOCD regulations).

2. Jini Fisher; Mother of two kids. Husband had recently left her; he had begun to use drugs and abuse her. (Had just gotten restraining order against him). Husband fought to avoid paying child support; Began missing rent payments, and eventually faced eviction charges; after first court hearing received GBLS assistance and tried mediation: eventually resolved case in court to move out.

3. Mike and Martha Fisk; Mike works intermittently as an apprentice plumber at \$7/hr, has two kids; Martha works part-time. Was in rent arrears off and on for 10 months; Received Emergency assistance first time fell behind in rent; second time reached repayment agreement through mediation.

4. Mimi Berman; Early 20's; single mother on AFDC (claims couldn't afford to work because of daycare expenses); Was evicted on no-fault grounds (landlord moved his close relative into the unit); Proceeded in court to 'buy time', and planned to move into sisters temporarily; hoping to get 707 housing but had no other housing options.

5. Sheila Payson: Tenant with two kids; Had been temporarily laid off and fell behind in the rent. Went through mediation to resolve the rent and other issues.

Professionals: The following is a list of the primary professionals from whom I drew my research results.

1. Josh Jacks: A mediator now for over 8 years, Josh has worked for a number of community-based and court-based mediation programs and is also the Assistant Director for the Graduate Certificate Program in Dispute Resolution at UMASS Boston. Josh has been a mediator for Tri-CAP (Community Action Program) for two years.

2. Carol Burner: Carol is Tri-CAP's landlord counselor. Carol has been doing community-based social services work for many years. Had most recently been working as a housing advocate until coming to Tri-CAP.

3. Helena Chaikins: Helena has been on Tri-CAP's HSP staff for 2 1/2 years as a tenant counselor and in an administrator for the overall low income advocacy department. Helena also works with a number of broad based coalitional efforts working on anti-poverty-related issues.

4. Jane Reikard: Jane has worked in the landlord/tenant dispute resolution field for over 12 years. Jane is the director of the city of Quincy's Rent Grievance Board.

5. Nancy Callanan; Nancy is the Director of the Housing Services Program for Quincy Community Action Program.

6. Dick Bauer: Dick is an attorney who works for Greater Boston Legal Services based in Quincy. Dick received a Master of City Planning Degree in the Department of Urban Studies and Planning at MIT.

7. Wyn Gerhard; An attorney who works with Greater Boston Elder Services (A division within Greater Boston Legal Services)

8. Jay Rose: Staff attorney for GBLS

9. Jack Hall; Jack works as a manager for the City of Boston's Rent Equity Board.

10. Linda Garcia; Linda works as a paralegal for GBLS

11. Ed Shanahan; Ed is the Managing Director for the Rental Housing Association, a division of the Greater Boston Real Estate Board.

Code List for State and local agencies which I will be mentioning

1. DSS: Department of Social Services
2. DMH: Department of Mental Health
3. EOCD: Executive Office of Communities and Development
4. DPW: Department of Public Welfare
5. EOHS: Executive Office of Human Services
6. CAP: Community Action Program

D. Discussion of the Characters

i. Who are the landlords?

The stories dual-purpose landlords tell about how they became property owners reveals much about their motivations as small business people. They also provide important information about the nature of their relationships with tenants.

Most invested in their property hoping to help pay their housing costs, build their equity and generate a little income on the side, if possible. They all acknowledged doing as much of the maintenance work as possible out of financial necessity. Many mentioned how far they had stretched themselves financially to be able to become owners.

- Cecilia Billona eventually bought property for those reasons. As her daughter told me, "I lived in those apartments when I grew up and my Mom and Pop worked 18 hours a day to be able to buy them."

- The Hecklers bought "as an investment for the future not thinking about immediate profit." And after not receiving rent for some months they told me. "We don't have much money and really depend on the rent for the mortgage. We could easily have

charged more rent for this housing,.... we're not out to gouge anyone."

- Working full time with HUD managing low income public housing projects, Len Simons invested so that his daughters could live in them, not focussing his efforts, he said, on maximizing income.

For the 'longterm residential' owners, their entries into the business were unplanned at best. John Boulder's story was typical.

- First, he bought into the paint store he had helped run for some time for his uncle. Then, as he reported "I began meeting real estate people. We weren't doing well in the paint business, but people wanted house contracting work which I began doing. Doing renovations for people who had bought their own homes, I decided I could buy also, so I slowly began acquiring old houses to fix up and sell. Gradually I traded up, and after 15 years dropped the contracting to be full time in property management." Boulder "plodded slowly," he told me, doing all the work himself for over 20 years before he began hiring people. Others also mentioned how unplanned their entries into the real estate business were.

Some mentioned their pride and commitment to be providing affordable housing. John Swimmer told me: "It's [his property's] like a new car. I wash it, take pride in it. I like puttering on it." Another told me: "I get a certain satisfaction from turning a 13 unit low-income SRO [single room occupancy] into a 30 units. I like seeing the building there and

thinking that these tenants have affordable rents." And another expressed his satisfaction in being able to offer low income rents "in a time when not many are available." This satisfaction seemed to be increased by their personal relationships with tenants.

ii. Who are the tenants

The tenants about whom I'm talking are low-income. I define low-income here as less than 50% of median income. Most of those who I interviewed qualified for GBLS assistance. (A family of four who is earning less than \$1200/month (approximately) qualifies and an individual who is earning ^{less} than \$600/month also qualifies).

Many work in wage labor jobs, others are on welfare. All share the common experience of having limited income to allocate in a region in which the cost of living is one of the highest in the nation.

These are the people who occupy the lower rungs of the socio-economic ladder. They include those on welfare as well as the working poor. Many are of minority status, lack education and job skills, and daily face discrimination and difficult choices about rationing scarce resources of food, money and patience to tend to the needs of their children. The rent problems they face are typically just the edge of a plate full with problems, namely; family break-ups, health problems, substance abuse and others. Characterized as "at risk" of becoming homeless, this tenant population is marginal enough that

temporary disruptions in their health, jobs or family life easily escalate to critical proportions.

On one end of a continuum of how these tenants manage themselves in private housing are those who are known as "problem [causing] tenants." Langley Keyes, a professor of urban studies and planning in DUSP, defines problem tenants as those individuals who "consistently terrorize, antagonize, or violate the rights of other residents living nearby." Michael Stegman defines a problem family as "one who either intentionally or otherwise abuses the property, is not a regular rent payer, or disturbs other tenants in the structure."

Objectively speaking, Pam Brinner's and Ellen Heckler's tenants were problems-causers. An example Pam provided for me about their behavior is that "these tenants swore at my mother regularly and had threatened to kill another woman who her daughter approached to pick a fight with." Her tenant was cited for assault as was the tenant's daughter a number of times. Ellen's tenant's child was removed by 51A petition; the mother was arrested twice as were some of her friends on the property for drinking and abusive behavior. She was evicted on nuisance charges.

18. Keyes, Langley. "Problem People in Public Housing."
Unpublished Draft

19. Stegman, Michael. Housing Investment in the Inner City
Cambridge, MA. MIT Press, 1972. Pg. 163

20. Just who is a "problem [causing] tenant?" If we defined problem tenants by who they are identified by -- class, ethnic or racial group or degree of social service support -- each might lose the chance to 'be judged individually'. And if we could define them by personal actions like anti-social behavior, destructiveness towards property and criminal activity, this still leaves much room for interpretation. Deciding who is a "problem tenant" raises difficult issues.

CHAPTER 4: RESEARCH ON THE RELATIONSHIP BETWEEN LANDLORDS AND TENANTS

A. The Distribution of Power within the Landlord/tenant Relationship

Along with the market and government, I have argued that 'the relationship between landlords and tenants' also significantly affects the ability of landlords and tenants to maintain joint tenure. There has been a great deal of discussion and controversy, however, about how power is distributed within this relationship. Because this issue is so central, I will discuss it throughout this thesis and will only introduce it here.

It is commonly agreed that the law was written to give landlords power over tenants. As a result, the tenant's legal obligation to pay rent was independent of the landlord's legal obligation to maintain the property in a habitable condition.²¹ Without this legal right to decent quarters, tenants could not obligate landlords to maintain the basics like the bathroom or heating system; furthermore, they feared that landlords would evict them if they pushed landlords to maintain these.

Although the nature of this relationship has been unequal, the balance of power has become more equalized in recent years. As Wyn Gerhard, a GBLS attorney stated, "the laws now provide for a lot of tenant rights... as in a requirement, a contract that the landlord provide decent housing in exchange for the rent."

Although tenants are now much better protected under law, many maintain quite strongly that tenants still occupy a very

21. As extracted from rules developed in Medieval England that formed English Common law governing leases.

unequal position, much reflected by their fear to assert themselves. "They're afraid to go to court... they want to take the path of least resistance, to pay the rent increase to avoid any hassles... they just have some real inhibitions," a GLBS attorney told me. One tenant confirmed this, telling me: "If I had gone to court I think he [the landlord] would have made things uncomfortable [for me]. It's his place not mine." Many believe, as a result, that landlords will neglect maintenance and evict without thinking they will have to follow due process.

Many landlords with whom I spoke, on the other hand, are afraid that they can't protect themselves from tenants. "My tenant could have gone in and destroyed the property and proven I was illegal and I don't think I would have been able to defend myself," one landlord told me. In Len Simon's case, for example, the tenant kicked in five doors, damaged the kitchen floor, knocked holes in the walls and soiled a brand new rug costing him many \$1000's -- without^{his} being able to collect on any of this -- which indicates how serious this issue is to landlords.

Landlords also feared that they couldn't protect themselves from code violations. "If tenants went to the building inspection department to cite them, they would very likely be able to cite any landlord who's owned their building for more than 5 years said Joe Prondak," who inspects for Quincy.

For many other reasons including that -- the awareness of the press has become heightened to the issues of homelessness, tenants can organize, GBLS has become more sophisticated and others -- many reported, the power of tenants within their

relationship has become more equal to the that of the landlord's in recent years. How power is balanced between landlords and tenants will be a theme throughout this thesis.

B. The Characteristics of Landlord/tenant Interaction:

Having polled many landlords and tenants about their attitudes towards each other, Michael Stegman claims: "while there is no evidence that the typical inner-city tenant considers his landlord a dear and trusted friend, as a whole landlords are viewed as the enemy less often by their tenants than they are by city officials, housing experts, and others." ²² Especially since Sternlieb studied landlords in Newark, the belief that the stereotypical landlord controls city housing inventories has steadily eroded. What I found exists between landlords and tenants more closely resembles the biblical phrase: "Do unto others as you would like them to do unto you." A level of reciprocity existed between landlords and tenants that governed much of their interactions.

Some of the landlords and tenants I interviewed did helpful things for each other as part of their relationship. When John Swimmer raises his rents -- which he told me he doesn't like to do but has to -- he usually makes an improvement on the property in response. "He was a good landlord with fair rents," Joan Bennis told me about her landlord. "I was also a good tenant, she also said. "The police have never been over, we garden, if something minor happens, I'll fix it." Her gar-

22. Stegman, Michael. Housing Investment in the Inner City Cambridge, MA. MIT Press, 1972

dening, fixing things, keeping the peace, and her landlord charging fair rents constituted reciprocity -- each exchanging being helpful -- that built trust. Said John Swimmer, "As a landlord I do feel a certain social responsibility if a tenant calls up at 2 AM to say he doesn't have heat.. as a landlord you are providing housing which is one of life's necessities."

Their approach to solving problems -- tenants missing rent payments, damaging the property or disrupting quiet enjoyment, landlords neglecting maintenance -- at times also reflected this reciprocity. For example, James Boulder's philosophy has always been to have personal relationships with his tenants. "I know their rent-paying histories personally," he told me. "I make it my practice to take time to talk, to understand their problems as they bear on our relationship." Boulder felt satisfied by being helpful, as he told me: "I'm always gratified by someone who spoke honestly that he has a legitimate problem, arranged with me to miss a payment and then made it up on an agreed upon schedule. Many catch up later. I like to both give and take the opportunity to get squared away." Boulder related personally and extended himself because 'being helpful' was satisfying, and because it made more certain that he would be paid.

What seems central to this kind of relationship is interdependence. Boulder's tenant depends on Boulder being flexible, and Boulder depends on his tenant meeting his agreement to repay. A simpler example is that landlords will offer tenants the chance to work on their properties in lieu of a portion of the rent; the tenant saves on the rent while the landlord saves on maintenance.

Proceeding in court is also a prime example of what increases interdependence between landlords and tenants. Because of the high costs and aggravation to evict in court and then to lease to new tenants, landlords try harder to help tenants to restabilize. As they referred to their use of court as a "last resort," landlords thus became more dependent on the tenant's ability to restabilize.

Landlords will also become interdependent with tenants who have trouble paying the rent. Laurie Miller's financial troubles began when her husband left her (Laurie was Daniel O'Shay's tenant). "At first," Daniel told me, "she had tried to find an apartment but as a single unemployed mother with three kids, no money or work references, it was very difficult. My wife and I started off being pretty lenient with her knowing it would take her some time to recover. We first said we understand and just get it in whenever you can." As O'Shay told me, "it was because she made promises" and because he "trusted that she would follow through" that he continued the tenancy without receiving rent for some time.

In sum, I found a dominant characteristic of the landlord/-tenant relationship to be reciprocity. Both help each other to make life more pleasant -- tenants fixed things, landlords offset rent for work -- which builds mutual trust. When 'being helped' was more necessary -- a tenant could not pay rent one month -- landlords will carry tenants for some time, trusting the tenant will reciprocate by following through with their agreement to repay.

C. How do Landlord/tenant Relationships Become Unstable?

i. The stages of disputing and the landlord's response to instability

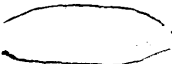
When parties first become unable to reciprocate is when disputing first begins. Felstiner, Abel and Sarat (F/A/S) offer a model for understanding how a lack of reciprocity turns into a dispute. They call this the 'transformation of a dispute'.²³

It starts when reciprocity first breaks down. For this breakdown to become a dispute warranting remedial action, as F/A/S state it, an "unperceived injurious experience must first be transformed into a perceived injurious experience." Tenants and landlords must each discern that they are being mistreated. Tenants, for example, may not say that they believe they've been mistreated for fear that landlords may attempt to evict them at a later date. This first transformation -- acknowledging to oneself that a particular experience has been injurious -- F/A/S call 'naming'. Once a party privately disagrees with the others' actions -- a tenant believes the landlord has been neglecting his unit, or the landlord becomes concerned about late rent payments -- the dispute becomes named.

If parties take the second step, the 'perceived injurious experience' turns into a 'grievance'. Believing that corrective action is needed, a landlord, for example, may serve notice of eviction at this stage, for example, but not plan to follow

23. I have adapted this section from Felstiner, Abel, and Sarat's model of the stages of disputing. Paper entitled: "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming..." (Section quotes all in paper)

through hoping it will induce the tenant to get out of arrears. John Swimmer's tenant pulled herself out of arrears two times in response to his notices, he told me. The third time, he wouldn't keep her "unless she did something like pay some of my additional expenses."

As the dispute undergoes its second transformation, one party may confront the other because they have been "injured," but will ask for reparations in order to restabilize the tenancy. Expecting this from his tenant, Boulder told me: "I'm not doubting that there aren't truly needy tenants... 9 times out of 10 though, it's the tenants bad money management and lack of motivation that leads to their problems paying the rent." Boulder told me that when he thinks this is the case, he tries to have face-to-face contact  with the tenant -- to re-establish rapport, listen to their situations, etc. -- in order to help them do more, which he believes they can do in order to stabilize.

The third transformation occurs when either landlords decide to evict tenants or tenants defend themselves against eviction. At this stage, for example, landlords will cease trying to enable tenants to restabilize. "Once they stop cooperating with me," Swimmer told me, "like not answering the phones, making clear bluffs, etc., then I'll up my defenses... and hand it to the legal process [and proceed to evict]." To Boulder, it was not only that his tenant didn't take advantage of an opportunity to earn the additional money needed to pay the rent, [instead of doing overtime, his tenant would play softball and come home with

a case of beer] but that he used the money he already had available for rent instead for something comparatively quite frivolous, like beer, that caused him to decide he must evict his tenant.

If landlords believed their tenants' excuses were 'legitimate' -- when Laurie Miller's husband left her with the two kids and no job or money -- their tenants became 'deserving'. If landlords believed tenants' excuses were not legitimate -- the Hecklers believed their non-working tenant could work -- "she's 24 years old, healthy, and doesn't have a child" -- they became less deserving. To the degree that landlords believe that their tenants are making reasonable efforts to respond to their situations -- adhering to agreements, being honest, -- however, they would continue to be flexible. If tenants didn't reciprocate eventually, landlords would then proceed to stage three -- to evict. Landlords thus employed this principle of 'desert' to mediate their internal debates about how far to extend themselves.

Among the types of tenants whose legitimacy landlords might question are those the Tri-CAP landlord counselor characterized as "having a lot of drinking, noise and behavioral issues that prevented them from paying the rent." The director of Quincy's Rent Grievance Board, Jane Reikard, told me she was less sympathetic toward those tenants who really could work but weren't.

24. It is how landlords distinguish what is a 'legitimate excuse' that highlights their tensions with tenants. Wolf's research, discussed later, shows that often the nature of the tenants' circumstances prevented them from being able to meet their landlords' expectations.

I found this principle to be widely applied as a measuring stick for legitimacy.

The tenant's behavior thus also played a key role in escalating disputes to this third stage. The Hecklers withdrew their flexibility primarily because of their tenant's behavior. "About two weeks after moving in, Kim [the tenant] started having very big parties that would last through the night, until we had to call the police. At one of them, there were people roaming on the roof... there was lots of drinking, and the police arrested her girlfriend for being so drunk. A month after this, DSS removed her child [for neglect under 51A petition]... a 5 year old child. The police arrested her twice and her boyfriend once while upstairs."

Kim stopped paying her share of the Section 8 rent right after she moved in, according to the Hecklers. "But because she kept on having parties that were so loud, we lived downstairs from her... We lost concern about the rent." The Hecklers tried a few times to construct agreements in which Kim would improve her behavior in order to stay, but she didn't comply. 25 The Hecklers eventually proceeded in court on nuisance charges and succeeded in evicting her.

25. A person who participates in the creation of a condition which materially interferes with the ordinary comfort of human existence or which is materially detrimental to the reasonable use or value of property or who allows such a condition after knowing of it's existence may be found liable for injuries caused by that condition, known technically as a "nuisance," according to Massachusetts General Laws. This includes conditions involving noise, noxious odors, fumes or vermin.

Along with the 'rent gap', behavioral issues also break down relationships between landlords and tenants. Landlords proceeded to evict much less on the basis of these issues although they discussed them as quite central to their relationships. A few professionals noted that landlords often disguise what actually are behavioral disagreements as rent increases. Said Nancy Callanan, coordinator of Quincy CAP's HSP, for example: "Most landlords file eviction cases but in reality they are nuisance cases. Landlords have had it up to their ears with domestic issues and see no other choice but to evict the tenant, so they raise the rent in order to create a case for nonpayment predicting they won't succeed making one for nuisance."

As landlords and tenants progress through the stages of disputing, thus, the landlord's response to instability is governed significantly by this value of reciprocity -- that tenants could respond to their situations by making reasonable efforts and being accountable. Landlords, however, made a clear distinction about whose excuses were legitimate, and adjusted their flexibilities on the basis of this.

ii. The Tenant's Response to Instability

When dual-purpose landlords and their low income tenants encounter instability, the criteria landlords develop to determine how flexible to be include: how responsive tenants have been previously when they've fallen behind, the legitimacy of their

excuses, and others. On the surface, tenants facing nonpayment issues talked the same language of reciprocity and legitimacy. Jini Fisher, for example, "could understand how he [her landlord] felt about not getting a paycheck." Whether or not they believed the rent was reasonable, tenants generally supported the landlord's right to it.

What actually prevented tenants from being able to respond as they had wished, they told me, were their 'circumstances', which typically were difficult. They included making choices at times between rent and food, coping with destructive marriages, facing significant emotional and psychological stresses, and others. Although tenants may believe on one hand that landlords' requests were legitimate, what was 'reasonable' for tenants to do in response was often quite different than what landlords expected.

Jini Fisher is like many other low income mothers whose financial difficulties exacerbated a range of other problems that made it even more difficult for them to manage their money issues. Research conducted by the "Stress and Families Project" at Harvard University (1980) on tenants like Jini Fisher points to the intersection of financial and behavioral issues that low-income tenants bring to their relationships with landlords. As Barbara Wolf reported in her paper entitled: "The Impact of Socio-Environmental Stress on the Mental Health of Low-Income Mothers," low-income mothers are at exceptionally high risk for depression and other serious psychological disorders. Her project's findings confirm previous research. Among the findings

were that:

Low-income mothers experience inordinately stressful conditions in many areas of their lives concurrently, and many individual stressful conditions correlate significantly with mental health indicators. For example, two-thirds of the mothers (tested) had primary child care responsibility, and only half got away from their children on any regular basis other than work. One-fourth had no time away. Parenting conditions correlated significantly with depression, with mothers who lacked child care assistance at highest risk.

Among the many stressful conditions investigated, financial stress -- both income level itself as well as financial unpredictability and insecurity -- emerged as the single most potent factor predisposing people to have psychological disorder. Besides correlating with mental health indicators, financial stress was rated subjectively as the most stressful area of their lives. It correlated with respondents' subjective feelings of worry and upset in other areas of their lives.

The project conclusions were that "women on welfare are stigmatized, seen as less than human, and responsible for their own poverty and misery... by labelling... recipients as dishonest, society is able to justify the controlling regulations of public welfare. In addition, the women often internalize these stigmas, blaming themselves and feeling dehumanized, unworthy of esteem."

In the public housing project where Barbara Wolf lived, she observed the pervasive feeling of tenants being "out of control

of what happens to you." Uncontrollable events and conditions were constant, daily experiences, and had multiple sources. Wolf found the housing project mothers had a common colloquial expression to refer to such experiences: It was "trouble."

One source of this "trouble" was inadequate income -- a stolen or missing welfare check, unexpected cut in wages etc. -- that triggered an unpredictable financial emergency -- no money. At other times, the source of trouble was an unexpected personal or familial stressful event -- losing a job, a family member becoming seriously ill -- that compounded financial stress and made it nearly impossible for mothers to adapt to or cope with the original stress. Feeling 'out of control' but trying to 'manage' their financial crises, tenants like Laurie Miller may often create further "trouble" by going to work illegally, (ie. without informing the welfare department), or borrowing money from a loan shark who may soon after begin to harass or threaten them. ^PThe tenants I interviewed faced the same kinds of "trouble." When Laurie kept re-promising to become stable again to keep O'Shay flexible while facing a personal crisis, her very efforts to become stable may have exacerbated her problems. Another tenant, Jeannie Bendix told me: "I had a restraining order out on my husband but was so afraid he would come back any day to hurt me. I felt so out of control, like I was being ripped to shreds by everyone," she continued. "I remember opening up the refrigerator and there was only cheese and bread, it was so scary thinking I might end up in a shelter... like a nightmare. But I most wanted to let my kids know they were

still loved."

But unlike some tenants, this tenant pulled herself together because things were so difficult. "I can still pull hard even when things get so bad," Jeannie told me. "I couldn't imagine living like those people in the shelters... having no money for food. It took a lot for me to go on welfare. I became very determined that I would make it in this world."

As tenants reported, their financial crises were mixed together with other problems -- of family breakups, loss of employment, violence etc. -- that made them more likely to bluff and to not keep agreements. Professionals who I interviewed discussed also how tenants' difficulties managing kitchens, taking care of children and handling other domestic affairs also became disruptions to the landlords. What to the landlord looks like 'the tenant isn't regaining stability' to tenants may represent their best attempts to restabilize given the multiple problems faced on top of their financial ones.

I have been separating out as well as weaving together the respective characteristics that landlords and tenants bring to their relationship when it becomes unstable. Dual-purpose landlords require regular rent payments and an atmosphere free from behavioral and social disruptions and will be flexible with tenants who become unstable based on some degree of reciprocity. Accompanying the financial problems of these low income tenants, however, are a host of social and behavioral problems

that threaten joint tenure. Low income tenants are thus often not able to provide what their landlords need.

Although landlords recognize this, they spoke most strongly about being 'over-burdened' by a problem which they felt belonged more between the state and the tenants. John Swimmer spoke for many as he told me: "Landlords are not a social service agency." After Len Simon acted like a caseworker for his tenant -- lining up jobs and arranging for daycare -- he felt frustrated by having to act "like a welfare agency." Swimmer likened his situation to a grocery store owner facing someone needing food but having no money. "He [the owner] simply can't just say give me what you have. It's very sad. The tenant doesn't have the right to take bread off the shelf without paying for it. Homelessness should not be totally the burden of the landlord."

At some point, either the landlord or the tenant will 'draw the line', and decide not to try to be helpful to the other, even if to help themselves as well. At this point, eviction becomes a certain prospect.

CHAPTER 5: WHAT HAPPENS WHEN EVICTION IS A CERTAIN PROSPECT?

In the previous section, I discussed the conditions that exacerbate instability within the relationship between landlords and tenants. Focussing specifically on cases where issues of either rent or behavior surfaced, I've described how landlords and tenants interact in order to save joint tenure, if possible. Once the landlord's frame shifts from 'how can I manage this problem so I don't have to evict' to 'I have no choice but to evict if I am to protect my interests', his or her strategies typically shift. When the tenant's frame shifts from 'what can I do to meet landlords expectations', or 'prevent the eviction issue from surfacing' to 'how can I keep myself from being evicted', their strategies shift also. Both stop thinking about their mutual interests and each begins to focus on protecting his or her own interests only.

Although I distinguish what happens when eviction is a certain prospect in this section, it's important to recognize that eviction is always a prospect once instability begins. The line between 'managing instability' and either 'the tenant being evicted' or 'the landlord selling' shifts at different points for many reasons. One landlord with whom I talked "carried" her tenant for 18 months "because she felt sorry for them." Others 'think eviction' the first few days tenants are late paying rent. It is when landlords and tenants 'shift their strategies', for discussion purposes, that they 'formally encounter' the issue of eviction within their relationship.

A. A continuum of methods

Just as eviction is always a prospect, any one of a range of methods is also always a prospect for landlords and tenants throughout the tenancy to help them resolve disputes. Whereas conflict resolution programs like Community Boards Inc. aim to use informal methods as early as possible in order to prevent disputes from escalating, ²⁶ the critical legal theory advocates believe that because disputes often reflect fundamental inequalities which the mistreated party should redress, escalating the dispute to the formal arena may help that party and its 'class' gain more power.

We can conceive of these methods as existing on a continuum of three general categories in which landlords and tenants address their disputes, ordered from least to most formal.

Continuum of Dispute Resolution Methods

<u>Self-Help (Least formal)</u>	<u>Informal</u>	<u>(Most) formal</u>
Dispute is resolved privately by parties (no professional involvement)	Use of 3rd party services to counsel parties about options and help resolve dispute through negotiation or mediation (HSP and local forums)	Legal posturing, use of attorneys

26. Ray Shonholtz, the founder of Community Boards Inc. in San Francisco, defines success broadly as the ability for disputants to control the process and construct agreements themselves. The more formal the process, Shonholtz argues, the less power the disputants have over it and hence the less satisfaction with it and its outcome. Perpetuating the norm that parties should file court cases, Shonholtz argues extends, weakens the disputant's initiative to discover what common ground may exist between the parties because they know they can use the courts and police to prevent a violent resolution if necessary)

- In the self-help category, the parties resolve disputes privately, exercising the most control themselves of all methods. Because my research involved only those cases where professionals were involved, however, I define self-help as private procedures that are influenced by GBLS and HSP.

- The informal methods feature a neutral 3rd party -- a neighbor, local minister, HSP counselors or mediators -- who may help the parties to define the problem, explore options and then build agreements that are satisfactory to both, if possible. Suzann and Leonard Buckle discovered that such a person, who they called the "neighborhood notable," exists. They define him or her as "someone commonly recognized as well-versed in the law, cognizant of rights and responsibilities of citizens and respected as an advisor on neighborhood concerns" -- to whom neighbors would take their problems."

- Most formally, the parties each invoke the law to win the most from the other. Both often employ attorneys, who, if they don't succeed through negotiation, end up before the judge. The parties themselves typically have the least control over the outcome once attorneys and judges become involved.

Although legal principles alone are employed when the parties come before the judge, when they negotiate more informally, they may 'jointly invent objective criteria' in which

27

27. Inventing Objective criteria' refers to a technique Fisher and Ury discuss in their book entitled: "Getting to Yes"; Negotiating with objective criteria, to Fisher and Ury, may include the following elements:

1. Reason and be open to reason as to which standards are most appropriate and how they should be applied.
2. Frame each issue as a joint search for objective criteria
3. Never yield to pressure, only to principle.

they focus more on their interests rather than positions in order to work more collaboratively to be able to increase each parties' gains. Invoking the law typically results in a more distributive process -- the more one wins, the more the other loses -- which leads the parties to become more adversarial than when objective criteria are applied.

B. The role that the law and the courts play within the relationship between landlords and tenants

The law and the court system in which it is most formally applied have quite a pervasive impact on how landlords and tenants resolve their disputes in this country. Within whichever method along the continuum they choose for resolving matters, the law and the courts provide a frame. Both the knowledge each party has about the law and the skills they possess to apply it will determine how successfully one or the other party can negotiate within this frame to maximize his or her own interests.

On the most formal end where the judge decides the outcome, in which we know the most, the landlord will almost certainly win according to some preliminary research I did on judicial outcomes at Quincy District Court (QDC). Below I present aggregated data
28
from cases entering the summary process court dockets from Aug. 15th 1988 to February 15th, 1989.

28. Eviction cases are called "Summary Process" actions and by law are designed to "process" the landlord's case swiftly (e.g.) in a "summary" fashion, as stated by Paul Shack in Legal Tactics: Self-Defense for Tenants in Massachusetts. Boston, MA. MA. Poverty Law Center, 1987

Aggregated Data from Summary Process Docket of
Quincy District Court

of Cases studied: 300

1. Of those cases where a decision was made -- either the landlord succeeded in eviction or the tenant remained, in what % of cases did the landlord win vs. the tenant?

- a. # of cases in which either landlord or tenant won: 223
- b. # and percentage of cases landlord won; 220, (99%)
- c. # and percentage of cases tenant won; 3, (1%)

2. For those landlord victories, what was the average monetary compensation rewarded?

Average monetary compensation awarded to landlord: \$1920

3. For how many cases did the landlord not win any money except for court filing fees? (approximately \$75-\$100)

For 18 cases, compensation to landlords ranged between \$75 and \$100.

4. What percentage of the landlords and tenants had legal representation?

- a. 103, (or 65%), of the private landlords were represented.
- b. 116, (or 83%) of the commercial landlords were represented.
- c. 8% of the tenants were represented.

Although landlords, as we know, will typically use the court "as a last resort" to avoid the expense, time delays and aggravation, when the judge decides, the landlords won 99% of the time.

Most cases, though, never make it to court. Marc Galanter, of Wisconsin's Civil Litigation Research Project determined that only 1 in 10 people who started out with a grievance ever made it to a lawyer; and furthermore, that only 1 in 67 pressed it to a final judicial resolution. Most of these cases are resolved

29. (Author unstated), "Debunking Litigation Magic," in Newsweek Magazine, November 21, 1983

within the self-help category without any professional involvement. Because most landlords and tenants resolve their disputes privately, they are affected more greatly by the role the law and the courts play in their private actions than when they are in court.

In this private arena, both the law and it's role within the courts provide a frame around which landlords and tenants dispute. Mnookin and Kornhauser call it a "bargaining endowment" -- a set of "counters" to be used in bargaining between disputants. They use a divorce case to illustrate this. (1979:968) "... [t]he legal rules governing alimony, child support, marital property and custody give each parent certain claims based on what each would get if the case went to trial. In other words, the outcome that the law would impose if no agreement is reached gives each parent certain bargaining chips -- an endowment of sorts."

Once landlords and tenants understand the law, they may negotiate in the "shadow of the law" (Mnookin) using legal principles to strike agreements in which both parties are satisfied. As Jack Hall stated, "it's a lot easier [for landlords] to be nice if they've got all the cards on their side. I advise them to serve tenants with every form possible, start a summary process and then start negotiating. Then they can say: I'm ready to cut you a break if you x, y and z." If the parties, conversely, don't know what their rights are under law when they undergo their negotiation process, I will illustrate soon, they may end up reversing their momentum and becoming less flexible.

There is much disagreement, however, as to how 'knowledgeable' landlords and tenants are about the law.

Linda Garcia, on one hand, believes tenants will begin to think about their rights and end up making a defense because they face so few options. "Although they think when first served that they'll have to move immediately, now they make that call to the social worker or they reach someone whose had a similar situation," says Garcia. Jack Hall, on the other hand, cites an Massachusetts Tenants Organization (MTO) study which found that only 25,000 tenants of all who live in Boston's 75,000 registered units are registered voters, to infer that if so few tenants in registered units vote as an indication that they know the law, then there is a great deal of ignorance about it.

One result when tenants don't know the law is that they may leave upon demand 'in order not to confront the landlord in court whether or not he had 'just grounds.' "I was so scared I thought I wouldn't be able to speak if I went before the judge... I was feeling so upset that I almost felt I should go...." Another result was that tenants withstood substandard conditions or unreasonable rent increases fearing eviction if they resist. Carol Burner counseled a tenant who didn't report that he didn't have heat for 10 months "because he was anxiety-prone and didn't want to generate any problems [with the landlord]."

When tenants applied the law, and their legal grounds were legitimate, however, they could succeed. When Mary Bishop's landlord notified her that she was going to be evicted for "nuisance" reasons, the grounds of which were illegal, Mary stood

her legal ground. She hired a lawyer and got the case dismissed
30
in court.

If landlords don't know how to defend themselves legally, they are likely to flounder when they begin the process of eviction, as many cases illustrated. Especially for small landlords who are typically the least well-educated legally, as Hall tells me, "lots of times they will make 2 or 3 bad moves like shutting off the water because they don't know the law, which only compounds the problem rather than to begin working with the tenants." Thus, when landlords are ignorant of the law, their very attempts to protect their interests may makes things worse.

It is when joint tenure becomes threatened and eviction is a certain prospect that landlords and tenants typically consult with professionals -- whose degree of control increases the more formal a method they employ along the continuum. I presented a matrix earlier in Chapter 1 (pg 18) for how and when HSP and GBLS should interact with parties in order to preserve joint tenure. I will now discuss how they operate -- how they frame the disputes between landlords and tenants, and what they do in response -- and will afterwards discuss the response of the parties to the professionals.

30. Although my data shows that tenants were represented legally at Quincy District Court only 8% of the time, we cannot infer, however, that if tenants were legally represented in court they would be more likely to win. A sizable proportion (35%) of the private landlords who won were not represented.

C. How do Professionals become involved?

I have been discussing the culture in which landlords and tenants manage their relationship when joint tenure is threatened. They each behave according to values, norms and beliefs in order to restabilize their relationship and to preserve joint tenure, if this is possible. What they know about the law and how to apply it may significantly alter their negotiating behavior. At some point in the process, some opt to use professionals. Out of the range of approaches professionals may use, I have simplified them down to two generic frames which reflect the two professional services I have studied -- the 'legal-negotiation' frame as represented by GBLS, and the 'counseling-negotiation-mediation' frame as represented by HSP. Within each frame, I will discuss later, are variations which, when 'matched' with a particular landlord/tenant relationship, will either widen or contract the negotiating room between them.

These professional groups generally agree about the problem as defined by the growing income gap. As a result of this gap -- between what landlords are charging and what tenants can afford -- the number of legal evictions occurring at Quincy District Court, for example, has increased 66% from 1983-88, from 501 to 828. Recall that median Boston rents have increased by 329% since 1970 and the number of 'poor' families has increased by 18% since 1980. Reducing this gap, most all agree, will

31. Dick Bauer of Quincy GBLS reported this figure at a forum sponsored by Quincy CAP in April, 1989.

remove a key obstacle to resolving the problems of affordable housing and homelessness.

Representatives from both groups also acknowledge that the 'system' -- of public and private sector activities which produce the resources of housing and human services -- should be improved. They acknowledge as well that it's unfair that society has placed much of this problem onto landlords and tenants. They agree that the state can be a more 'effective agent' though they disagree about if this means necessarily spending more. What kinds of improved responses they do suggest the state should make often differs; as does the way each defines the problem and the techniques each uses to work with each client. I will first present the approaches of both professionals and then discuss the response of landlords and tenants and the role of the state.

i. GREATER BOSTON LEGAL SERVICES FRAME

GBLS operates a multi-faceted legal assistance program for low income persons residing in the city of Boston and in 25 surrounding communities. It was established in 1975 by the merger of the Boston Legal Aid Society, dating back to 1900, and the Boston Legal Assistance Project.

GBLS uses an individual's income as their primary criteria for determining who qualifies for their services. In 1988, a family of four who was earning less than \$1200/month (approx.) or an individual earning less than \$600 qualified. This rules out all property owners, according to Jay Rose, (a GBLS attorney)

except for those who don't derive any rental income from their properties and have very low incomes.

Although GBLS works daily, case-by-case, representing and educating tenants in order to preserve their affordable housing and keep them from being evicted, they define the problem of preventing homelessness and preserving affordable housing more largely in terms of 'rights'. Couched in a larger vision that "supplies moral principle to developing a comprehensive housing policy for the commonwealth."³² these 'rights' are spelled out in a proposed amendment which GBLS and others have sponsored. As excerpted, "All people are born free and equal and have certain natural, essential and unalienable rights; among which are; that of occupying habitable and affordable non-transient housing...." By framing the problem in this manner, GBLS provides sufficient grounds for working only on behalf of those people whose rights they believe are being threatened -- low income tenants.

To protect tenants whose tenancies are being threatened, GBLS has established a series of goals, as stated in their 1988 Housing Unit Plan. They are to:

1. Preserve and increase supply of decent, safe and affordable housing. The primary work of GBLS' here is legislative.
2. Expand provision of services to those in "protected groups" to combat housing discrimination. This includes fair housing cases.

32. MA. Chapter of the National Lawyers Guild (author), Legal Tactics: Self-Defense for Tenants in Massachusetts; Section written by Smizik, Frank I., entitled: The Right to Housing

3. Expand Tenants' awareness of and exercise of their rights; and deter lawlessness by private and public actors.

4. Prevent displacement of tenants and help secure affordable housing for those who are or may become homeless.

GBLS's approach when relationships between landlords and tenants become unstable is primarily to invoke the law to defend tenants against eviction. Due to tight resources, (exacerbated over the past 10 years by Reagan's fight to dismantle GBLS altogether), GBLS must limit its direct client service. Jay Rose, a GBLS attorney, estimates GBLS must reject 5 out of 6 cases for full representation. GBLS also does not have the resources to represent tenants in "for-cause" cases -- for example, those in which there is suspected evidence of drug use or other illegal activities by the tenant. GBLS hopes the gains they achieve against landlords from the cases they do 'try' may deter other landlords from acting similarly. The bulk of GBLS's work involves providing training and a pro se kit for tenants to exercise their legal rights themselves.

GBLS works to stop evictions altogether, if possible, or to delay them long enough for tenants either to reinstate themselves or to move smoothly into new housing. To achieve their objectives -- "preserving and increasing safe, decent and affordable housing" -- (GBLS Housing Unit Plan 1988), they advocate for tenants only, and generally do not attend to protecting the interests of the landlords. (GBLS policy permits them to represent low-income homeowners but income guidelines prohibit most any who provide rental property from using their services).

To do this, an attorney told me, means; "We don't go in questioning what would the landlord think... that's not our job, to look at it in a balanced way. We go into it thinking what do we have to use as proof, not thinking if this is fair to the landlord... And being advocates only for tenants makes our job a bit easier."

33

The Pro Se kit which GBLS put together in 1982 encapsulates it's frame, as I quote and use capital letters as the kit uses them. "If you are faced with an eviction,... IT IS AGAINST THE LAW for your landlord to physically throw you out, change the locks, turn off the heat or lights etc. The only way your landlord can legally get you out is to go to court to evict you. If he does, you can fight the eviction in court.... If you can get a lawyer, you should,... otherwise, you need to know how to handle your eviction case yourself..... REMEMBER -- NO MATTER HOW GOOD YOUR CASE, YOU WILL BE EVICTED IF YOU DON'T DEFEND YOURSELF.... and whatever you do may increase the chances of stopping or delaying the eviction. There are two basic types of defenses -- Your landlord has violated your rights as a tenant, and your landlord has not followed all eviction rule..."

As GBLS attorneys interpret their role, their first obstacle is to overcome the tenant's intimidation. According to one attorney, "you have to advocate for them, tell them what their rights are, and push them as far as they're willing to be pushed.... but you still can't play God and say you should do

33. Pro se means to represent oneself legally in court. GBLS offers its' clients a pro se kit for them to use to invoke the law with minimal use of attorneys. Pro se materials wer produced by Susan Cohen and William H. Abrashkin, 1982

this and we're gonna make you do something." Another attorney plays harder. "We simply should not just say [to the clients] what do you want. We should tell them what we think they need, giving them information and a recommendation." Their overall goal here, though, is to help tenants to tap their motivation for defending their rights and to advocate to maximize their own gain as an outcome to their dispute.

Assuming the landlord has a legal basis for evicting the tenant, then as part of the court process, the tenant's defense may be to hold him accountable for following the exact letter of the law for any and all statutes that he or his attorney may discover, including the eviction proceeding itself. Citing these may delay the proceedings, win them financial compensation and even stop the eviction altogether.

A GBLS attorney put it this way: "When we first get a nonpayment case, we will look at everything,... to see if the landlord has done everything correctly. Was the notice filed correctly, security deposit, etc. Next I will look at code violations, which I'll learn by basically listening to the tenants description of the situation." And another attorney continued; "[a]nd there almost always is some kind of procedural problem [on the landlord's part].... because you know there's a fairly good chance of dismissing the case because the landlord's goofed up, you definitely go ahead and do that, which provides more time for the tenant."

For those dual-purpose landlords who want to keep non-subsidized tenants but can't meet these demands, GBLS-currently, as

a rule, will not protect them from facing these procedures. Against whatever type of landlord our clients face, Jay Rose told me, our goal is to prevent evictions whether or not we can provide full representation. If (dual-purpose) landlords might go under if they are forced to meet all GBLS's demands, Rose suggested, then sometimes GBLS will "blink" (Rose) at the more minor violations in order to keep these landlords afloat.

In response to the claim by dual-purpose landlords that they 'can't protect themselves', GBLS attorneys raised diverging views -- about which cases they should handle -- that Rose says reflects both policy debate and their financial constraints. Although one GBLS attorney told me that "we [GBLS] still feel internally that we have to take a hard line stand on these small [dual-purpose] landlords," Rose told me GBLS is debating the idea of placing those type-cases as a lower priority for full representation.

Within my model service system, GBLS here would act more like HSP to keep them from turning dual-purpose landlords into problem-becoming mode. Because GBLS cannot learn much about the smaller landlords' financial constraints for the following reasons -- GBLS defends against too many, doesn't have the resources and is restricted to doing intake with their clients only -- Rose told me, it is very hard for GBLS to be able to make these determinations.

ii. THE HOUSING SERVICES PROGRAM FRAME

EOCD's Housing Services Program is the other primary professional service approach which I have researched, whose approach I have named the counseling-negotiation-mediation frame.

As their brochure states, "The HSP offers an inexpensive, effective way of assisting low-income tenants and homeowners to remain in their existing housing." Along with providing technical assistance and workshops, HSP provides education, counseling and dispute resolution services. During 1987, for example, 4700 landlords received counseling; 11,500 tenants received counseling, 4279 of which required extensive assistance. ³⁴

Tri-CAP, the local HSP on which I most focussed my research, received 750 odd housing-related tenant calls in 1988 that were split evenly between eviction issues, code violations and rent increases.

The typical landlord they serve, according to HSP, owns one building rented to low-income tenants. 52% of them are owner occupants and typically wish to keep the tenant in the unit. Of those tenants served, 66% are female heads of households with income below the federal poverty guidelines. 44% of them are minorities.

Whereas GBLS works specifically to protect the rights and interests of tenants only by defending them against landlords, HSP works towards protecting the rights and interests of both landlords and tenants by collaborating with both of them

34. Information presented in Housing Services Program brochure

Relying not only on the law but on reality-testing and mediation techniques, HSP seeks to uncover and address those underlying issues -- particulaly behavior issues-- that don't come under the 'for cause' category -- that often go unrecognized yet seriously threaten joint tenure.

As does GBLS 'educate' and 'train' tenants via their clinics and pro se kit, HSP staff 'counsels' both tenants and landlords. Helena Chaikins described counseling as "laying out what I see as the options at that point.... and then helping them both to decide the value that each of those options has for them and to choose the most appropriate one." "The counselor's job," to Grace McKinnon, who works with Chelsea's HSP, "is to separate out the issues for the party.... it's critical that our advocates use counseling skills and get at the emotional issues which are always a significant part of the dispute."

Using the skills of a counselor -- listening, validating, and clarifying and others -- counselors may begin to surface those issues that cannot be addressed by using legal defenses alone. As Nancy Callanan described, "she [the tenant] let her baby's diapers regularly go loose in the house which leaked into the hallway causing smells that became serious issues that threatened the tenancy. Because she doesn't know basic mothering skills, my job then became to teach tenants how to live sanitarily as tenants, [for which I have very limited time]." Nancy frames the problem here as how to surface the underlying issues on which there may be negotiating room. She hopes that achieving agreements on these issues will revive landlords' motivations to

strike agreements on the other issues.

My research illustrated that landlords will be more flexible based on even minor (although some) evidence that tenants can reciprocate. It is for those disputes where the gap is 'bridgeable' through negotiation and mediation that counselors seek to build the confidence of these landlords by helping tenants to find ways of reciprocating. Because GBLS typically does not investigate if landlords may still be flexible and proceeds to defend tenants assuming they are not, landlords may become inflexible in response because GBLS avoids making much effort to help tenants to reciprocate. Rather than to assume without investigating that landlords already are inflexible, HSP instead assumes that landlords may be flexible and will continue to remain so if HSP can increase their confidence that tenants can make changes.

To increase their confidence and thus enable them to 'bridge' their differences, Helena advocates that tenants tell landlords as early as possible about their situations. "When landlords first put rent increases into effect, Helena tells me, if the tenants simply pay the increase without any defenses, they will then become legally obligated to pay it, but will likely not be able to pay it a couple months later, which will make things worse. If I can get them into mediation earlier," Helena continues, "they can work out a lower increase or a graduated one which the tenant will be able to handle." Because she has heard landlords often tell her "if she [the tenant] had only told me,... they [the landlords] resent having been kept in the dark,"

she believes that if landlords can address issues early enough through negotiation, many times they will be more willing and able to be flexible.

HSP works towards discovering if gaps in both behavior and rent are bridgeable by helping parties to understand what is well-founded about the issue at hand. HSP calls this 'reality-testing'. Nancy Callanan reminds landlords, who tell her their only option is eviction, "how costly, time-consuming and difficult it will be, although it's their choice." Grace McKinnon "educates" tenants whose tenancies are "preservable" yet who refuse to comply with the landlords' requests -- to improve their behavior or begin to repay the rent -- that "if they don't [comply], the landlord will legitimately confront you and the judge also will likely not respond positively."

Reality-testing may surface 'unreasonable' financial situations facing either landlords or tenants. For those problem-causing landlords who seek rent increases that were 'unreasonable', both as a percentage increase and relative to comparable apartments, Helena will alert tenants that they should defend themselves by using services like GBLS. Similarly, for those tenants who just won't be able to bridge the rent 'gap' unless a subsidy is available, which Helena knows she cannot assume, Helena "doesn't think it pays for them to prolong it [the eviction]. Even if they were able to defend against eviction case on code violations, the landlord can turn around, repair them and start the eviction process again," she told me.

How HSP staff defines "success" correlated with these

practices. According to Grace McKinnon, "We say we get 80% success, meaning that 80% of the time the parties got something they both wanted, even if they agreed that the tenant would leave." Josh Jacks told me that if they were "either preserving tenancies or facilitating communication, then they were doing their job, because the prevention of homelessness doesn't always mean the continuation of the tenancy." In fact, of the 40 mediations Tri-CAP did in 1988 where the parties struck agreement, the tenant agreed to leave the unit in about half (20) of them according to Jacks' estimate. A tenant may agree to leave, Jacks told me, because they believed they would secure new housing although Jacks says he is limited to do follow up to find out if this actually occurred.

Unlike GBLS, though, what HSP may provoke in order to make landlords 'have to' do something is dependent on their choice of whether or not to participate. Consequently, problem-causing landlords will often determine if they are willing to extend further before they take part. When they have already decided they won't extend further -- that under no conditions will they consider keeping the tenant -- HSP staff generally believe they will typically choose not to use their services. Because the costs to evict -- in money, time and aggravation -- are so high, however, these problem-causing landlords may use HSP -- but, to be able to evict less expensively or to win the best terms for themselves only. HSP must then protect the tenants from these landlords -- either by referring them to GBLS or by best applying their skills, the law and reason -- when these landlords refuse

to be flexible. Unlike HSP, GBLS can be more successful at protecting tenants against these landlords who refuse to negotiate and be reasonable.

My research will show that GBLS turns dual-purpose landlords into problem-causing types when GBLS does not integrate their needs and interests into the dispute resolution process. HSP aims instead to do as much as possible to meet dual-purpose landlords' needs and interests so that they may withdraw from wanting to evict tenants. For many of these cases, Tri-CAP staff told me, there were issues of both money and behavior. Jacks provided an example of a typical agreement.

- The tenant agrees to not leave the trash in the hallway and will lock the door to the common areas.
- The tenant will agree not to play the stereo after 9 PM and will ask his children to do the same.
- The tenant understands that the rent is due on 1st of the month and agrees to pay it.
- The landlord agrees to accept rental assistance program funds for rent payments.
- If problems arise with the heating system, the landlord agrees to respond by the next day.
- If the landlord needs access to the apartment, he will give 1-2 days advance notice and will not go into the apartment when the tenant isn't there.

Being able to build agreements to which both parties would commit increased their willingness to continue joint tenure. Each parties' commitments extended only as far, however, as she trusted the other to meet her obligations. For both parties to be willing to enter into such agreements and to stay committed to them, some told me, they needed HSP to monitor the parties. One technique Grace used to leverage the parties to uphold their

agreements was to tell them that "whoever breaks it will be in jeopardy before the judge." HSP staff told me, though, that they are very limited both in time and resources to be able to monitor agreements. It is this area, I will discuss later, where I believe HSP can do more.

D. The Response by Landlords and Tenants to the Professionals

In this section, I will discuss my research results on how landlords and tenants said they responded to the roles of GBLS and HSP.

i. The Impact of HSP

Landlords and tenants did shift toward dual-purpose mode as a result of HSP's intervention. After Sheila Payson was counselled by HSP, she "sent some rent money to her landlord in advance of the mediation" as she told me, which showed good faith. When a landlord found out that her tenant had missed rent payments because she was laid off temporarily, she became much more flexible and agreed to a repayment plan.

HSP's ability to counsel on a wide variety of problems that threatened joint tenure also kept landlords from withdrawing their flexibility. In one way, counselors who recognized that tenants would lose out because they were so intimidated, would work hard to convince them that they did have some rights. As Helena told me: "It's hard to convince tenants that they can exercise their rights. I help them realize they at least have some time [before they have to leave]."

In another way, counselors who recognized that tenants were 'perpetrating' the most by repeatedly disobeying doing basic chores, being loud and unsanitary, they would sit down with them to teach them some skills with what limited time was available. They would also help these tenants 'face reality' about the risks of being evicted if they didn't make some improvements.

Landlords and tenants believed that HSP could do more, however, to build their confidence in the agreements they struck. For O'Shay to have remained flexible, he told me, he would have needed his mediator to "write up a strict agreement -- which the tenant would have to abide by -- that would be monitored after a month. If the tenant couldn't comply, he would then go to court." Frank Kessler asked his mediator if he could request that the tenant report to him about his status vis-a-vis compliance." If HSP increased their monitoring, landlords told me, they would be less likely to withdraw from their agreements.

Although this works in the reverse -- tenants pushing landlords to comply to keep tenants from invoking the law to force compliance -- I did not uncover any examples of this because of the limited number and type of landlords and tenants whom I interviewed.

The role mediation played helped push both landlords and tenants to stay in dual-purpose mode. For Kessler, mediation "put a jolt, some formality into the process. I didn't think they [my tenants] could realize how serious the consequences would be if they didn't pay the rent [they'd become homeless] until Jacks [the mediator] jumped in. And they started to pay

it." For Sheila, her landlord became flexible, as this landlord told me, because she learned through mediation that Sheila's money problems were only temporary -- they had not been able to discuss this on their own. "I believed she [the landlord] was trying to evict me," Sheila told me, "but when she learned [through mediation] that I had been out of work, she changed her attitude."

ii. The Impact of GBLS

The role GBLS played or threatened to play helped a number of landlords to withdraw their problem-causing behaviors. "When GBLS came in," Swimmer told me, "they found a loophole in the law, posted a code violation and then used it, which was fair." "When I learned from GBLS that I was in violation and had to install a buzzer system for \$1800," another told me, "I improved myself as a landlord." When Joan Bennis' landlord cited her illegally on nuisance charges, her attorney developed her case, which forced her landlord to negotiate and led Joan to become able to stay in her unit. As a result of GBLS's role, Quincy HSP director (Nancy Callanan) told me, "many landlords are demanding more mediation services because they predict they'll lose significantly if they go up against GBLS." GBLS thus prevents problem-causing landlords from winning at their actions and it pushes them to start acting more in dual-purpose mode.

Interviewees expressed that GBLS had a much stronger impact, however, in shifting landlords and tenants from dual-purpose into problem-becoming mode. Many of the landlords with whom I spoke

had spent additional \$1000's to cover non-collected rents, repair damages, compensate for code violations and fees for their attorneys -- in order to evict tenants, some of whom would be classified as "problem-causing." This made them feel very bitter about and retaliatory against the role of GBLS. They have also become quite vindictive and have begun to shift from dual-purpose into problem-becoming mode. "As a result of this [GBLS intervention]," one told me, " now I am very seriously considering selling it off to condos."

One way in which GBLS and tenants work together -- that effects this shift -- is in how tenants used the pro se (self-help) kits which they received from GBLS. When Suzann and Leonard Buckle studied how tenants used the pro se kit, they found that (many) tenants "waved the kit" in front of the landlord saying (paraphrased): 'Don't you try evicting me because I know my defenses and you'll pay for it'.

The way in which tenants learned how to apply GBLS strategies to issues -- that were tangential to the primary ones -- convinced landlords that these tenants were mis-applying the knowledge that GBLS had taught them. Just after GBLS had consulted with Pam Brinner's tenant, for example, Pam faced an issue when she tried to obtain a rent subsidy for her (mother's) tenant. "Because she said she was eligible," Pam Brinner told me, "I sought this out but soon discovered she wasn't [eligible].... Because I raised the issue [of eligibility] and also of how she will now become able to make rent payments, she [the tenant] went immediately to the Board of Health to bring charges

against me."

Once landlords learned that the shifts tenants made into problem-becoming mode occurred right after they had received GBLS's services, they told me, they shifted most directly and quickly into problem-becoming modes. "It was after she got Legal Services help that I believe she started threatening me," John Swimmer told me. "On that second hearing day," Len Simon said, "she had just been told by legal services to cite me because there were no batteries in the smoke detector; I had actually inserted them but she had taken them out. They [GBLS] told her to complain about the heat but she didn't even think there was any heat problem before legal services got involved."

As a further example, another landlords' tenants learned that he [the landlord] had not signed a statement 14 years earlier relinquishing his obligation to pay utility bills (although the tenant had agreed verbally to pay the landlord) , the tenants told him: "Now we won't pay anything and if you try to evict us, we'll sue you for everything you have including every back utility bill." To this landlord, this was "legal aid [who] was talking."

What this effected in these landlords, they say, is a withdrawal in the negotiating room which they had still expected to exercise. "If there were any chance that she could reinstate rent payments with public monies, family help, a schedule to get out of arrears, whatever," Simon told me, "I would have kept her. Instead of making at least some effort to try to improve things between us, when she turned hard line using GBLS to make all

these new claims which until then were not problems to her, I withdrew being flexible."

"We were trying to convince her not to have those loud parties." the Hecklers said, "so we wouldn't have to file nuisance charges which she promised not to do, but after she got legal services, she refused to talk to us and the parties resumed." It was the effect GBLS had on tenant attitudes, these landlords told me, that removed any remaining cooperative elements within their relationships.

What seemed most threatening to preserving tenure, dual-purpose landlords said, was the power tenants gained through GBLS to be able to delay and sometimes to prevent those evictions which landlords believed were reasonable. It is this power of theirs, landlords say, that is driving them out of the business often more strongly than market forces. "If I can't protect my affordable housing business from the legal process," John Swimmer told me, "I don't want to aggravate myself with it. I used to think the law was reasonable in that as long as I gave tenants a decent apartment, I could collect my rent through the courts if necessary. Losing three months rent then was fair. Now we're talking about a tenant who can stay for 5-8 months or longer without paying which is too unreasonable." Many landlords echoed John's statement.

Harry Spence, who took over the Boston Housing Authority in 1980, made this need clear in the public housing world, as he stated: "Eviction becomes a key to making projects liveable and that the ability to move cases quickly and effectively through

the court system is critical." What these landlords state clearly is that GBLS should play less of an adversarial mode if GBLS intends to keep them from moving more quickly toward

eviction and possibly withdrawing altogether.

Thus, both GBLS and HSP effected a variety of changes in modes and attitudes among landlords and tenants toward the issue of tenure. Coupled with the response by landlords and tenants themselves to the role of the law and the courts, professionals acted in ways that both widened or contracted the negotiating space among the parties. The role of the state -- both the programs it operates and its regulatory powers -- also induces changes in this joint tenure balance. I will discuss the effect of one particular program -- the Chapter 707 Rental Assistance program -- on the issue of preserving joint tenure.

35. Stated by Spence in Boston Globe article on 2/2/82

36. Moving cases too quickly to eviction may breach the rights of those tenants, to many. GBLS defends its right to be able to prevent any and all of those who qualify for their services, from being evicted; and they will use whatever legal procedures are possible in order to do it. They are thus quite critical of the policy HUD recently adopted, whereby HUD now permits local housing authorities to be able to waive federal due process guidelines that necessitate a grievance panel to evict tenants for drug use or other criminal activity. Although the tenant is still protected by court due process, GBLS fears that tenants for whom the evidence of drug use is insubstantial, may be evicted too easily.

E. The Role of the Chapter 707 State Rental Assistance Program

The role that the Chapter 707 rental assistance program plays as intersecting with the landlord/tenant relationship and the role of the professionals throws an important overlay onto the issue of preventing homelessness and preserving affordable housing. Overseen by EOCD, the Chapter 707 Rental Assistance program is similar in principle to the federal Section 8 program, and has helped Massachusetts' families at a time when the federal government has all but halted the expansion of the section 8 program.

In the early 80's when the commonwealth first increased it's attack on the problem of homelessness and affordable housing, the state debated if making certificates available to tenants who had just become homeless would create an incentive to do so. They decided, though, to give them a try. Many believed that tenants would do everything within their powers to avoid becoming homeless, yet they also knew that the effect of this widening gap might be that the number of 'realistic' options for tenants without the subsidies would decrease to very few.

This widening income gap, coupled with other 'behavioral and psychological difficulties' associated with the financial stress of low income tenants together have reduced much of the negotiating room available between landlords and tenants. Consequently, even when tenants weigh the difficulties of becoming able to 'qualify legally' as a homeless person and waiting whatever number of weeks is necessary -- either with a relative

or at a hotel or shelter -- before getting one, many have opted to get the subsidy having little other choice.

"We now have this system of perverse incentives," says Irene Lee, Homelessness Coordinator for EOHS. As a result, state rental subsidies for the homeless have increased from \$750,000 in FY '86 to \$10 million in FY '87 to \$40 million in 'FY 88.³⁷

A consensus has thus formed that the state is not managing the problem well enough by giving "the homeless" as high a priority over them as they've been granted previously. In fact, the state, for both fiscal and policy reasons, may likely be reducing it's number of available certificates by as many as 2000 in FY '90 (a cut of \$8.5 million).³⁸ Although part of their reason is due to fiscal constraints, more and more people have become convinced that placing too few conditions for obtaining and retaining these certificates has led too many to become dependent on them, which is not the ultimate goal of the program. Their proposed strategy includes to tighten up the eligibility requirements as well as to shift more of these certificates to the "at-risk" population to prevent them from becoming homeless.

One GBLS attorney responds to this issue by stating that "low income tenants cannot survive in the private housing market without a subsidy." Even when tenants cannot secure one, GBLS will still defend them in order to delay eviction as long as possible if not to prevent it altogether. This income gap, as

37. Data pulled from Boston Globe article of 2/21/89 entitled: Rent Subsidies Planned for Families at Risk).

38. These figures were reported in a preliminary statement by the (State) House of Representatives in April, 1989

exacerbated by the absence of a certificate, becomes so great that the negotiating room may not be able to be widened unless very creative and intensive means are explored to generate new strategies to increase it. If GBLS does persist in these cases without building any confidence on the landlords' part, and is successful in delaying the eviction at a significant cost to the landlord, however, this raises one of the fundamental questions around which this thesis is organized.

Should we save the tenant even if it means losing the landlord? If the likely result of not saving the tenant is that he or she literally becomes homeless, ('on-the-street'), this question assumes a more moral dimension. If this tenant instead choose to enter the state's shelter/hotel/motel system and begins to access particular services earmarked for the homeless -- housing search, job search, counseling etc. -- in order eventually to restabilize and relocate back into private housing, the question becomes more 'manageable' both politically and ethically.

Because HSP espouses a dual agenda of protecting the interests of both landlords and tenants, it cannot adopt such a (GBLS) strategy -- to save^{only} the tenant -- because this ~~may likely~~ drive the landlords away. When HSP attempts to preserve joint tenure relying only to a limited degree on any subsidies, the number of cases in which they can find any negotiating room becomes much more narrow. I am arguing in this thesis about what a better system for preserving joint tenure 'without a subsidy' would look like -- which will quite likely be the case in the future.

Although HSP counselors have known until recently that they could be reasonably successful in securing a 707 voucher, they have been cautioned quite strongly by their state supervisor to avoid doing so (unless 'absolutely necessary'). Although HSP headquarters "breathes down our [offices'] necks to not tell people that they can make themselves homeless in order to get subsidies," Helena says, Tri-CAP [and other HSP agencies] face the growing challenge of how to increase the negotiating room without using subsidies. What landlords imply is that increasing the monitoring activities and expanding it to include stabilization services will widen their negotiating room by increasing their confidence in the tenant's ability to adhere to agreements. This challenge, however, is formidable.

PART III: TOWARD AN IMPROVED SYSTEM FOR PRESERVING JOINT TENURE

CHAPTER 6: SUMMARY OF FINDINGS

A. Discussion of Key Findings about the Balance of Power between Landlords and Tenants, the Characteristics of their Interactions and their Response to Instability

Although Massachusetts has stepped up its production of affordable housing throughout the '80's, the gap between the overall supply of affordable housing and the number of low-income families has continued to increase. The combination of a rapidly rising housing market and declining tenant incomes has exacerbated this by increasing this difference between what landlords are charging and what tenants can afford. In their drive to maximize profits, an increasing number of landlords have proceeded to upgrade and to 'condo-convert' such that either they or their buyers become forced to evict low income tenants.

Traditionally, most agree, landlords have been able to coerce tenants fairly freely because they had the power to evict; and, they have been able to evict fairly easily. The laws and regulations have changed in recent years, however, to significantly increase the legal protections for tenants; and legal service organizations have appeared on the scene to invoke them against landlords. When landlords begin their eviction proceedings, for example, they can most definitely, according to inspectional departments, be cited for some violation; they will also be quite likely to make mistakes in proceeding when they attempt to evict. Both of these may deter landlords significantly from succeeding. Many more thus agree now that:

1. The tenants' powers to protect their interests has become more equalized in recent years.

Landlords still intimidate and exercise power unfairly because they have the power to evict and they will continue to do so. Unregistered small landlords still control a sizable proportion of the housing stock in Boston, says Jack Hall, and little is known about the private methods with which these landlords and tenants address the issue of eviction. This is a significant problem that threatens the needs and interests of dual-purpose tenants in fundamental ways.

The negative consequences for landlords if they resort to offensive tactics, however, have become more equal to those of the tenant. If landlords 'threaten or coerce' too much, this may likely drive tenants to their legal defenses and produce the opposite effects than what the landlords had intended. When Mary Bishop's landlord told her repeatedly that she must leave because she was a nuisance -- he told her he had police reports that indicated she had been drinking excessively -- Mary sought out legal assistance, invalidated the police reports and won her case against him. Because of the threat GBLS levies over landlords furthermore, many say they are deterred from taking advantage of their tenants.

The unreasonable costs many landlords incurred when they did succeed in evicting tenants testify to their weakened positions. Pam Brinner's expenses were over \$20,000 in lost rent, damages, compensation and legal fees; Len Simons' was close to \$10,000, and John Swimmers' was over \$5000.

The nuclear warfaring doctrine called MAD (Mutual Assured

Destruction) provides a useful analogy. Because the US and USSR are at rough parity in nuclear capabilities, each recognizes if it attempts to destroy the other that it will be sufficiently destroyed in response, which limits the power of their threats. When the power that landlords and tenants wield becomes more equalized, both sides are limited in using offensive tactics. They both must negotiate more and use the relationship and it's interdependency more to their mutual advantage.

2. Inherent within the relationships between landlords and tenants are stabilizing forces.

Most all landlords will not proceed immediately to evict tenants the minute they miss a rent payment nor will tenants cite landlords when they first neglect maintenance. Rather, particular factors serve to maintain interdependency within their relationship. Some of these factors are:

a. The costs in money, time and aggravation to landlords if they have to win a judicial decision in order to evict tenants induces them to try harder, at first, to stabilize their tenants when problems crop up. Landlords typically referred to court as a "last resort" which they would use only if there were no other options.

b. Landlords recognize that the costs in loss of rent, advertising and personal hours expended to re-lease their rental units once they are vacated are high enough that they may work harder to keep existing tenants in them in order to avoid these costs.

c. Because of the tight housing market in Boston, there are

very few affordable options for tenants if they are evicted. Once tenants recognize this, they may increase their efforts in their existing tenancy to meet their obligations as a tenant.

d. Both landlords and tenants typically 'do things' for the other's benefit as part of their relationship (similar to how people interact in other relationships). Tenants will fix things, garden or simply respect the privacy of their landlords, while landlords will offer them work on the property, etc. The result is that parties build mutual trust in each other, and will be more tolerant if the relationship breaks down temporarily.

Once the relationships between landlords and tenants become 'unstable', what may they do themselves to preserve their joint tenure before eviction becomes a certain prospect?

3. When relationships become unstable, there exists 'negotiating room' -- neither will become inflexible immediately -- within which landlords and tenants may extend themselves in order to preserve joint tenure.

Landlords and tenants will both not escalate their defenses provided that the other 'reciprocates' to a reasonable degree. Under conditions of reciprocity, they will each 'extend' themselves. For example:

a. Landlords will serve notice not in order to evict, but to call more serious attention to their requirements. They recognize that tight financial conditions restrict tenants from paying but they want tenants to make 'paying rent' as much of a spending priority as possible. Landlords say they do this often intending to preserve negotiating room -- to forgo eviction -- under conditions in which tenants will begin to make a greater effort to get out of arrears.

b. Under GBLS guidance typically, tenants may be willing sometimes to forgo forcing landlords to repair all code violations when it may drive that landlord out of business. Jay Rose, a GBLS attorney, discussed using this type of strategy with landlords who faced financial constraints but still wanted to house low income tenants.

c. Landlords will be flexible to provide time for tenants to restabilize based on their ability to reciprocate and be accountable. They base this on:

i. The tenants' circumstances; When tenants face circumstances additional to those which make them miss rent -- problems with their health, marriages or children, etc. -- landlords will often extend themselves while they monitor the tenant's progress.

ii. The tenant's responsiveness to their situations; Landlords told me they would be more flexible when tenants were more: upfront and honest, adherent to interim agreements and motivated -- more 'accountable' The more that landlords trusted that tenants would and could respond to their situations, the more they extended themselves.

Both landlords and tenants may widen or contract this negotiating space according to the degree to which these conditions of reciprocity and accountability are met.

4. Landlords and tenants are better able and generally more willing to negotiate and to be flexible when they're well-defended legally.

Because most eviction disputes between landlords and tenants don't make it before the judge, much of their dispute resolution activities happen privately. Both the law and it's role within the courts provide a frame around their private disputing process such that the outcome the law would impose gives each party

certain "bargaining chips." Landlords and tenants will be more able to use these chips in order to be flexible and to preserve joint tenure when they are better educated about their legal rights and how best to apply them.

If landlords didn't know the law or how to follow it, a tenant could reverse their progress toward eviction by invoking the law in response. Particularly through the help of GBLS, tenants, like the ones with whom I spoke, delay landlords in their eviction proceedings and in some cases stop the eviction altogether. Landlords expressed frustration that even if they did follow the law, furthermore, they would still get caught with something they hadn't done correctly, which would impede their progress.

Although most every tenant with whom I spoke had been educated to some degree, as they had all used professional services, landlords traditionally have more easily been able to take advantage of tenants who are not educated. Without understanding that they can defend themselves legally and how to do it, tenants will be more easily intimidated by landlords who threaten or actually carry through to evict.

When dual-purpose landlords or dual-purpose tenants are educated about the law, however, they are more likely to be able to be flexible and to preserve joint tenure. Dispute resolution professionals with whom I spoke reminded me that they regularly counsel parties about the value of knowing what their rights are and how to invoke them in order to improve their bargaining powers and to increase the negotiating room.

When problem-causing landlords and tenants understand the law and how to apply it, however, they may and do use it to take advantage of the other party. Landlords, for example, will take advantage of tenancy-at-will agreements to evict long-standing tenants -- who have been very responsible as tenants -- with as little as one months notice. (Although this is legal, it may not be reasonable). Although I found that most people believed that understanding the law correlated with increasing the negotiating room, the attitudes of landlords and tenants clearly play a major role. Problem-causing tenants and landlords will inevitably use whatever they know to protect their interests only.

It is when eviction becomes a 'certain' prospect that professionals and other outside dispute resolvers generally become involved. Although many advocate that neutrals -- volunteer mediators, neighbors, ministers, others -- should intervene as early as possible to prevent the parties from escalating the dispute, people generally don't confront conflict until it escalates, as the literature confirms. We are challenged by the need to promote the value of addressing conflict early in order to manage it more effectively.

B. Discussion of Key Findings about the Role of the Professionals

I set forth in this thesis to test my belief that particular aspects of the current service delivery system offered by GBLS and HSP not only didn't improve the conditions for joint tenure but in some cases impaired them. One belief which I tested was

that often when GBLS worked to defend tenants only against dual-purpose landlords, they could 'win the battle' in some measurable ways -- delay the eviction, earn compensation -- but 'lose the war' by driving these landlords to leave, convincing other landlords to do likewise, and oftentimes being unable to prevent the eviction anyway. Although I recognized that GBLS did state as one of it's priorities the need "to preserve decent, safe and affordable housing" ('88 GBLS Housing Unit Plan) and was doing that very successfully by protecting tenants against problem--causing landlords, I believed that some of their practices threatened their ability to meet these needs in the name of trying to meet them.

As I conducted my research, I began to hypothesize about what an improved system might look like. I also speculated as to which type of clients GBLS and HSP should serve and how they should serve them in order to preserve joint tenure. I set forth the following matrix that shows when and how I believe that HSP and GBLS should be involved in order to preserve joint tenure.

	dual-purp. landlords	prob-causing landlords	dual-purp tenants	prob-causing tenants
<u>Greater Boston Legal Services</u>	play HSP role	Yes	play HSP role	play HSP role
<u>Housing Services Program</u>	Yes	conditional **	Yes	should do more mo- nitoring

** - HSP should be involved here only when they can balance the power between landlords and tenants and can provide a non-coercive atmosphere of negotiation. HSP must be able to protect tenants if landlords try to manipulate the process to achieve their own interests only.

What I found is taking place between landlords and tenants as a result of the involvement of GBLS and HSP generally confirmed what I had initially believed. That is, there are both effective and ineffective aspects of each professional approach toward preserving the conditions of joint tenure. I will illustrate these here by discussing the impact of GBLS and HSP on the conditions of joint tenure between landlords and tenants.

i. The impact of GBLS on the conditions for preserving joint tenure

It is obvious to the commonwealth that it's rising housing market has enabled a growing number of landlords to be able to profit greatly by converting and upgrading their units, which has displaced many low income tenants. Although problem-causing landlords engage in this activity more readily, the rising market induces many dual purpose landlords to shift to profit-only activities because high profits are available. GBLS, state regulators and non-profit groups all combined have been able to help only a modest proportion of these tenants to be able to stay housed at affordable rates.

1. GBLS protects tenants against problem-causing landlords and causes problem-causing landlords to act in dual-purpose mode

What I confirmed is that GBLS plays a critical role in preventing problem-causing landlords from succeeding. Sometimes problem-causing landlords would shift into dual-purpose mode indefinitely whereas others were stopped only temporarily. GBLS did this both by protecting tenants on a case-by-case basis and

by deterring other problem-causing landlords who were considering similar actions.

Many landlords claimed that as a result of (or in fear of) GBLS, they now meet their legal obligations to their tenants and act more 'reasonably' toward them. I understand how GBLS does this mostly only by hearing landlords reflect on the impacts that GBLS is having on problem-causing landlords in general. I did not learn this empirically because I was able to research case of dual-purpose landlords only. The research I did do led me to uncover many more examples of how dual-purpose landlords turned into problem-becoming ones in order to protect themselves against tenants -- who they believe turned against them much because of the efforts of GBLS. There are more problem-causing landlords against whom tenants need GBLS for protection than there are dual purpose landlords who we must protect from GBLS, however.

I did not learn much, thus, about how dual-purpose tenants turned into problem-becoming tenants through their own and GBLSs' initiatives. I provide an illustration, here, though. Joan Bennis' landlord filed a notice to increase her rent by approximately 75%. This proposed increase was both unreasonably high as a one-step increase and also illegal because EOCD regulated her landlord's rent increases. (Her landlord received a financing package from EOCD in exchange for maintaining affordable rates). Her landlord's behavior caused Joan to shift into problem-becoming mode. She began to learn about the power landlords may wield if tenants don't defend themselves. She soon sought out GBLS to defend her case and she won easily.

Because I encountered so few examples like this, I am limited in being able to discuss the responses of tenants to problem-causing landlords that accompanied their shift into problem-becoming mode. Not studying this important area represents a lack in the completeness of this study. Uncovering more examples such as Joans' would have helped me to increase my understanding of the culture of tenants -- in particular, how they learn on their own when faced with unreasonable threats -- and how GBLS protects them.

2. The effect of GBLS has been to turn many dual-purpose landlords into problem-becoming landlords -- toward choosing to make their units become 'unaffordable' and to vindicate themselves

What dual-purpose landlords say is that GBLS is preventing them from protecting their abilities to remain in dual-purpose mode, which is counterproductive to GBLS's espoused goal of "preserving affordable housing." They claim that a result of GBLS's activities is to drive them toward choosing to make their units unaffordable either by selling for conversion or by upgrading themselves. They cite two ways in which this GBLS activity is happening.

1. When the effect of GBLS is to drive tenants into problem-becoming mode at the stage where landlords are still committed to keeping the tenant and to being flexible, these landlords reverse themselves and turn strongly against their tenants. They evaporate any and all remaining negotiating room and proceed most quickly toward eviction.

These landlords described one scenario that occurs; they are

at the stage where they still have confidence that, if efforts like those of HSP occur -- which help tenants to reciprocate or to become and remain stable -- they can preserve joint tenure. At this stage, what they say they resent most is when tenants, after collaborating with GBLS, radically shift their strategies to reduce their cooperation, ^{they} and become both highly defensive and highly offensive. As a variety of professionals and landlords report, these tenants will, with the help of GBLS, seek out every possible way in which to cripple their landlords' credibilities -- including to 'throw the book at them' for any illegal activity they discover landlords are committing -- in order to maximize their gains only. In response, these landlords say, they feel doubly betrayed -- both because they had been stretching themselves, they believed, in order to be flexible, and because the tenant's response to their stretching was to turn against them.

2. When the objective of GBLS becomes to delay or even to prevent evictions primarily in order to keep particular tenants from having to leave, dual-purpose landlords believe they cannot stay in the business any longer. (These landlords are referring to those tenants who clearly are problems -- they resist making any agreements, resist paying rent, and intimidate their landlords if they try to invoke the law). As Dick Bauer states: "If they [the tenants] are able to hang in there [stay housed] long enough to be able to get a job, to get their kid in daycare... the longer that tenant can hang on, the better prospects there are that something will happen to help the tenant... and sometimes it doesn't happen and the tenant ultimately ends up

becoming homeless anyway." If this works such that the tenant becomes able to stabilize without it taxing these landlords excessively, then GBLS is doing their job well.

Against those tenants who, before they are evicted, 'hang on' and 'ultimately become homeless anyway', however, landlords go through an ordeal to them that they say is extremely unfair. One ordeal they described was the toll on their emotions and their physical health. "My mother [the landlord] had to turn the property over to us, she went into such a state of depression because of all this," said Pam Brinner. Ellen Heckler "had a miscarriage and hemorrhage right after she [the tenant] had a party from all the tensions."

The other ordeal is what occurred as a result of what they say are unethical practices on GBLS's part. As Pam Brinner told me, her tenants "made wild allegations through the help of GBLS that ended up delaying me for months. The GBLS attorney cited that the roof leaked but it didn't... that the bathroom drain was defective but it worked fine, all delaying the process." As Pam continued, "He [GBLS attorney] told my tenants that they don't have to pay rent because their landlord can afford to pay for them." Because GBLS has enabled tenants like Pams' to avoid paying the rent for many months or to repair damages let alone the cost to their health, these landlords are both losing their motivation to provide affordable housing and are becoming vindictive in response.

I base my argument that these efforts of GBLS are, to a certain degree, counterproductive to their goal of "preserving

affordable housing" by looking at some of the responses by landlords to GBLS's actions. I cite four examples.

1. Landlords are now adopting new screening practices that increase their standards for accepting new tenants (within MCAD guidelines). "As a result of this," said James Boulder, "I'm very critical now about who I will rent to. I'm willing to spend money to get credit ratings on the tenants."

2. They are upgrading to make their units unaffordable to low income tenants. Pam Brinner "will do a total upgrading and then make a higher priced apartment, and I'll make it unaffordable," she told me. "And my decision to do this is a direct result of this (GBLS) experience."

3. They are seeking to change the laws such as; to quicken the eviction process and to make GBLS attorneys personally liable for having generated false paperwork that delayed the process so long -- among others.

4. They are forewarning prospective landlords about the dangers of renting to tenants who qualify for GBLS services.

"Anyone who has worked in troubled central city public housing developments knows that the first plea of the tenant leaders is that the means be found to get rid of the problem families," said Langley Keyes (piece entitled: "Problem tenants in Public Housing). When Harry Spence took over the Boston Housing Authority in 1980, he advocated that the legal service attorneys and other advocates be neutralized (if not won over)... so as not to bog the authority down. If GBLS prevents not these

tenant leaders but dual-purpose landlords instead from being able to evict those problem-causing tenants -- who end up becoming homeless anyway -- without it taking many months and exorbitant amounts of money and aggravation, then many of these landlords will not continue to rent to low income tenants and may get out of the affordable housing business altogether. For their protection, they urge GBLS either to avoid these cases altogether or to play more of an HSP role.

According to policy and their job descriptions, GBLS says they cannot make any determination of who 'not to fully represent'. Although questioning 'who is a "problem"' and 'will speedy evictions breach rights' is important, not tackling these issues is leading to results that are quite counterproductive towards preventing homelessness and preserving affordable housing.

ii. The impact of the Housing Service Program on the conditions for Preserving Joint Tenure

As the HSP brochure states. "The HSP offers an inexpensive, effective way of assisting low-income tenants and homeowners to remain in their existing housing." Clearly, the nature of the HSP process is to seek those conditions in which the conditions of joint tenure are maximized. Their strategies include -- to seek ways to increase the negotiating space between landlords and tenants, to help the parties to create agreements that will rebuild each party's confidence in and commitment to the other -- which are both necessary in order for their relationship to become and remain stable.

Much more than does GBLS do this, however, HSP 'reality-

tests' to discover if the gaps -- between what landlords are charging and what tenants can afford, and between how one party is behaving and what the other party is requiring of him by law and reason -- are bridgeable. If HSP determines that the landlords' claims for rent increases or behavioral changes on the tenant's part are 'unreasonable', they may refer the tenants to GBLS if they believe they can't protect the tenant themselves.

HSP also takes these cases on themselves -- intending to balance the power -- in order to meet the interests of both parties. If HSP's mediators or counselors are not skillful enough to protect tenants when landlords act coercively -- when a landlord, for example, hides his own misdeeds yet tries to convince a tenant that she will have to and thus should leave -- HSP risks achieving a worse outcome for the tenant than what the tenant might achieve by using GBLS. (In that example, GBLS could balance the power more easily). It is for these reasons that I am arguing that HSP should handle those cases on the condition that their staff is trained well enough to balance the power and to provide a non-coercive atmosphere for negotiation.

When HSP determines that the claims of the parties are 'reasonable', however, they face the possibility that they cannot protect a tenant from having to leave unless she can meet the 'reasonable' requirements of her landlord. Assuming they cannot depend on 707 subsidies, what HSP seeks is to increase the negotiating room and to build one party's confidence in the other in whatever ways are possible.

Although HSP works toward achieving joint tenure if at all

possible, they try also, if one party must leave (typically the tenant), to keep that tenant from becoming homeless. Of the 40 mediations Tri-CAP held last year in which an agreement was reached, the tenant agreed to leave in twenty (20) of them. Many were confident, however, that they would not become homeless, which may mean, however, that they will crowd in illegally on their relatives or live in other conditions that are substandard. Because Tri-CAP is quite limited to know what actually did happen both in the short and the long term with these cases -- let alone for the 750 clients who called in for services in '88 -- it is difficult to know how well HSP is preserving joint tenure.

There are three ways in which HSP is successful in increasing the negotiating room between landlords and tenants in order to preserve joint tenure; in one, however, they are limited.

1. HSP enhances those factors that naturally incline landlords and tenants to become more interdependent with each other.

Two factors which they enhance are:

- i. To open up communication in order to increase one party's understanding of and appreciation for the other party's situation.

When Renee Coles learned that her tenant had changed jobs recently, which caused her to fall behind on the rent, she became willing to negotiate a repayment plan. "Often the landlord didn't even know the reasons why the tenant wasn't paying the rent," a landlord counselor told me. "When that information is shared," she continued, "Landlords would often become much more flexible and willing to negotiate." "What's different about

mediation," Renee told me, "is that someone is in there listening and understanding that helped us become cooperative." Frank Kessler decided to use Tri-CAP again because he had "dealt with unbelievably cooperative people."

ii. For HSP themselves to build relationships with their clients to induce them to become more flexible in the future.

Tri-CAP's landlord counselor discussed the value of building relationships with landlords in particular in order to increase their willingness to negotiate and to be flexible in the future. "When I build the landlord's confidence in our ability to recognize and meet their interests right from the start," Carol Burner told me, "they will be more likely to call us much sooner the next time and to try mediation rather than simply to say unwaveringly that they want that tenant out."

When these two factors are enhanced, the parties will then be relying more on the stabilizing forces that are inherent to their relationship.

2. HSP can widen the range of issues to include ones that are more possible on which to negotiate agreement -- which may increase the negotiating room on the other issues

When landlords believe they cannot resolve behavioral issues themselves, they've used their freedom to raise the rent in order to force an eviction rather than to seek help to resolve them. By raising the rent beyond the tenants' means, landlords could evict more easily than by winning on other grounds like nuisance or suspected drug use, according to a variety of dispute resolution professionals. When HSP staff surfaced and became able to

resolve a behavioral issue, for example -- the tenant agrees to be quiet himself and to keep his stereo down after 11 PM -- this enabled the parties to begin to achieve success in actually creating agreements.

By discovering a range of behavioral issues like noise, garbage, pets, etc. which were quite important to the landlord, thus, the parties said that they found areas on which they could negotiate, the resolutions of which could help parties to build momentum to resolve the rent issues and others. And if the parties couldn't resolve these new issues, it would clarify that the tenancy was doomed.

3. HSP provided a formality that could increase the accountability of landlords and tenants beyond what they could achieve privately

One example of a formality is the practice HSP makes of using 'active listening', (an activity where counselor draws out the client through validating and clarifying questions). "It's critical that we use counseling skills to get at the emotional issues which are always a significant part of the dispute," said Grace McKinnon, "because parties are often not very clear and need to separate out the issues." Mediators adapted these skills to induce parties themselves to listen better to each other. In general, the formality HSP provided was to provide a process in which the parties would push themselves beyond what they do privately to find agreements. As landlords told me, the mediator had more power than they did to motivate parties to adhere to agreements. To Frank Kessler, "this process put a jolt, a

formality into our agreement." With the mediator reminding them (the tenants) that they can be evicted if they don't pay, I think they took this process much more seriously. They realized what the consequences were." The landlords who went through mediation commented that the mediator's role was a critical one in building some confidence that their tenants would become accountable, which allowed these landlords to become more flexible.

4. HSP was limited in helping landlords to build confidence in their tenant's ability to adhere to agreements because HSP did very limited follow up.

What HSP is limited to, I inferred from the landlord's comments, is to sustain each party's willingness and ability to remain accountable to their agreements over time. Because HSP generally cannot do much monitoring, parties can build only limited confidence in the power of their mediation and counseling practices to institutionalize necessary changes. I will discuss one strategy for how HSP might improve on this as a recommendation.

CHAPTER 7: MATCHING THE FRAMES OF THE PROFESSIONALS WITH THE RELATIONSHIP BETWEEN LANDLORDS AND TENANTS

I have presented the conditions that occur when eviction is a certain prospect. Both the landlord's and tenant's knowledge of the law and their enactment of it -- how they negotiate and interact within it's 'shadow' -- play a major role in effecting the outcome of their disputes. When professionals become involved with their different frames, as I found, they quite often effected a 'shift' in each party's mode.

From facing GBLS, I found, problem-causing landlords may 'shift' into dual-purpose mode. They might withdraw from neglecting their units or from evicting tenants temporarily; and withdraw indefinitely so long as the tenant resumed and maintained conditions of reciprocity -- that they paid the rent and did not cause disruptions. GBLS hopes the threat it holds over landlords will deter them from further problem-causing behavior.

From facing GBLS, I also found, dual-purpose landlords shifted into problem-becoming mode because they believed GBLS disrespected their needs and interests as they defended their clients. Landlords shifted also, they said, because they believed the collaborative efforts of GBLS and the tenants allowed for their tenants' problem-causing behavior to be legitimate or for tenants to turn into problem-becoming mode. In response, they say they will make things more difficult for the population of low income tenants who qualify for GBLS's services. They may do credit checks before leasing, learn about their previous GBLS involvement, if necessary, upgrade or sell --

in self defense.

From facing HSP, on the other hand, I did not find any landlords who shifted from problem-causing to dual-purpose mode mostly because many of these problem-causing landlords don't want to negotiate with tenants and will avoid using HSP. I believe this type of shift does not occur as a rule.

I have also found that embedded within the culture of the relationship between landlords and tenants is some amount of negotiating room that gets widened or contracted by how they address the issue of eviction. Landlords don't just evict tenants the minute they stop paying rent nor do tenants immediately cite landlords once they neglect maintenance. Rather, they both take 'steps' of threats and counterthreats, cooperative gestures, promises and agreements, as they try to preserve joint tenure up to a point -- afterwhich one party or both will inevitably have to leave.

My research indicates that the response by landlords and tenants to many factors -- the role of the state, law, courts, professionals and others -- serves either to widen or contract the negotiating room when they encounter instability in their relationship. When the frames of the two professional organizations which I have studied -- the legal-negotiation (GBLS) frame and the counseling-negotiation-mediation (HSP) frame -- 'match' this relationship, each will serve either to widen or contract their negotiating room, and hence the conditions for preserving joint tenure.

Factors that 'widen' the negotiating room for landlords and

tenants include:

- Both the landlord and tenant are educated about the law and negotiation and they understand their bargaining positions, yet they recognize the mutual benefit to exploring common ground before falling back onto them.
- When instability first occurs, parties proactively address problem intending to preserve joint tenure, knowing that if they avoid the conflict, it may eventually escalate until it inevitably costs at least one party it's tenure or both.

Factors that 'contract' this negotiating room include:

- A landlord who does not understand the law or how best to apply it notifies his tenant informally and by word-of-mouth that unless she becomes more regular in paying rent, she'll have to leave. Instead of responding by both investigating the landlord's legal status and addressing the issue of paying rent, the tenant instead tells the landlord only that if he 'tries' to evict her, she'll have the inspector cite him and that she has begun to investigate if he is violating codes or other legal requirements. The landlord then decides that he must evict the tenant immediately. The tenant then adopts a full legal defense strategy and the landlord becomes most inflexible in response.

1. The matching process with the legal-negotiation (GBLS) frame

i. An example of a match between the legal-negotiation frame and the landlord/tenant relationship that contracted the negotiating room

Consider a tenant (Linda) who goes to GBLS when her landlord first serves notice. Although her relationship with him is still good, she assumed he would not negotiate any further no matter what she did. After consulting with GBLS, Linda decided first to investigate his legal status. Rather than to seek a way to protect her interests in such a way that her landlord might 'buy in', she quickly assumes her landlord's worst motivations instead; she uses GBLS to escalate 'her defenses' against eviction, intending to maximize her gains only.

Len now assumes Linda's worst motivations, escalates his defenses, loses any interest in Linda's welfare, and proceeds most efficiently towards eviction. Linda does leave eventually, free from most rent arrearages.

The mismatch occurred because of the way GBLS assisted, said the landlord. He said afterwards that he would have still worked out an agreement if she hadn't "changed face" so radically -- evaded his needs and fought to maximize hers only. Because GBLS defined the problem as 'detering lawlessness' and 'preventing [tenant] displacement' only, without considering how to help the landlord also to protect his interests, the landlord reduced the flexibility he still had, which might have enabled them to preserve joint tenure. He now does not want to rent again to low income tenants. Although GBLS may have satisfied it's short-term criteria of delaying the eviction and maximizing

financial compensation for the tenant, it caused the landlord to 'reframe' his situation too quickly.

ii. An example of a match between the legal-negotiation frame and the relationship between landlords and tenants that widened the negotiation space

Mike and Martha Fisk are the tenants for Frank Kessler, who eventually called Tri-CAP to help him resolve the financial and domestic issues separating the parties. As Mike told me, "we've been behind with the rent a lot since last summer." In October when the Fisks had fallen three months behind, the parties resolved the matter through Emergency Assistance funds, but the Fisks fell behind again in December. Although Mike attributed this to his financial woes, (I'm in and out of work as an apprentice plumber making only \$7/hour), to Frank, "the issue was their lack of desire to pay rent." Frank felt "the real problem was getting them to become serious about paying this rent money."

Regarding domestic matters, Mike had agreed to do some painting and mechanical chores, but, as he told me, "didn't get around to them," which made Frank get very upset with him. Frank had previously made arrangements for Mike to do this in lieu of rent, which never happened. Frank would threaten to serve notice, periodically, but the Fisks did not make any changes in response.

Although Frank did not want to evict -- "it would take a long time to win in court and cost a lot of money" -- he was feeling increasingly that he did not have any choice but to evict.

In this case, (like many I discovered), Kessler hoped he wouldn't have to evict unless absolutely necessary but he wouldn't extend himself any further toward the tenant. An example of the legal-negotiation frame whose match widened the negotiation space goes as follows.

Mike learned what his legal rights are -- that he could hold Kessler accountable for any and all code violations and other legal obligations and force him to comply with them before Kessler could advance his case for eviction. Mike knew that there were at least some minor code violations.

Mike needed to stay and knew what Frank's legal obligations were. Frank needed Mike to resume paying the rent and to complete the housework as agreed. Mike and his attorney could negotiate in the 'shadow of the law' to seek an agreement in which both parties would be satisfied. Regarding the codes, Frank had stated: "I've fixed things all along and will continue to do so if Mike becomes more regular in paying the rent."

For Frank not to evict let alone to keep fixing, Mike needed to show 'good faith' on the rent. From this, Frank could again trust. "It was a lack of trust," said Josh Jacks, "that very often breaks down the momentum to find agreements through mediation."

Here, Mike knows the law and acts on it's basis not to maximize his gains only, but to increase his bargaining power as a negotiator seeking solutions -- agreeable to Frank but that protected his tenure. Establishing legal defenses not to defend himself but, instead, to negotiate towards mutual satisfaction on Mike's part matched Kesslers' needs.

2. The Matching Process with the Counseling-negotiation-mediation (HSP) frame

i. An example of a match between the counseling-negotiation-mediation frame and the relationship between landlords and tenants that contracted the negotiating space

Consider the case where a tenant (Audrey) has been irregular in paying her rent now for the past half year. She had first become increasingly unable to pay until she stopped being able to pay altogether. She said she had options -- going on public

assistance, getting family help, etc. -- which she could still use to reinstate herself. Her landlord (David) has breached some of his basic obligations as well -- at times he has delayed in fixing the bathroom for days on end and in providing heat for short intervals. David neglected these not because of his financial limitations, but because he is most interested to maximize profit and to 'convert his unit' as soon as possible.

Over the past two years, he has steadily increased the rent to levels that are higher than average for similar units, hoping that Audrey would decide to leave on her own. When the back rent Audrey owed rose to three months, David decided to serve notice and to follow through. Because he became afraid of losing more if he took his case the full legal route, he then suggested that they go to mediation. He believed, privately, that he would be better able to induce Audrey to leave more quickly and inexpensively through mediation.

Audrey was very quiet when she first met with a counselor. She expressed interest to do mediation, but was non-descript about her response to the landlord. On one hand she listed some ways where she could reinstate the tenancy, but none, to the counselor, seemed well-formed enough for her to rely on. Her rent was much higher than what her benefits might cover, and her family was too poor to be able to help her. The counselor felt that she was enough in control, seeming quite calm and agreeable in response to the landlord's requests.

As the mediation session begins, David first lists all the reasons why Audrey in good conscience must realize it's appro-

priate for her now to go -- she can't and won't be able to pay the rent that he needs to charge to make ends meet -- and proposes a resolution in which she leaves with terms he hoped she would believe reflected his generosity. "I'm willing to give you two months," he tells her; "and I'll forgo collecting but one month of back rent, and I'll replace the rug and the door that you damaged as well." When she proposes that he give her another chance because she may get help, he reels off a series of incidents where she didn't keep to her word to indicate that he doesn't trust her and that she shouldn't trust herself.

Audrey had previously learned what her legal rights were. She had mentioned her concerns about the code violations but had downplayed their importance "because David's case seemed so strong." She had agreed to do mediation for reasons that were unclear to the staff. In her private session with the mediator after David made his public proposal, the mediator explored options with her -- to stop the process in order to proceed legally, to negotiate to stay on the basis of her options to secure monies coupled with welfare, to consider if the judge offer a better deal which she could leverage to get David to improve on his, etc. Because she was intimidated and convinced that she wouldn't fare better using more defensive tactics, she resists choosing the option to use more defensive strategies. (Maybe 'being convinced' helped her to not face 'feeling all the fears' associated with overcoming her intimidation). "I can understand his position," she tells her mediator, "and I know he'll get angry if I stop him at this point."

Audrey decides to accept David's offer. She later learns that a tenant who faced a similar situation as hers won a much better deal when he went before the judge.

Discussion; For the mediator to balance the power in this instance, he must help Audrey to sort out her options to best protect her own interests in response to a landlord who is looking out only for his. Because David has neglected some basic maintenance responsibilities and has raised the rent without having legitimate financial reasons, Audrey should employ some defenses in order to balance the power.

Because the mediator's and counselor's work is primarily to help clients to 'choose freely' among options, they face the difficulty of remaining aware to know when it's best and how best to assume a more advocative stance. In this case, the process would have worked better if Audrey grew more cautious and resistant to choosing to do mediation as a result of her counseling session. It's in that session where the counselor may have better elicited the underlying issues -- that she was too afraid to assert herself at all, not able to get needed monies together, let alone to know where to go if evicted. Given that Audrey was so intimidated, HSP staff could have done a number of things better to balance the power.

1. They may have more effectively surfaced from Audrey what David's own 'breaches' were, how they affected her, and what compensation she believed she should get in response, all of which may have helped her to overcome her intimidation.

2. They could have reality-tested more effectively with Audrey to:

- a. Play out her options for getting monies together to help her realize these weren't realistic.
- b. Help her to realize that she could win more time or not have to leave altogether if she invoked the law; which would also have pushed against her fears about asserting herself.

3. They could have stopped the mediation process altogether because they weren't able to preserve a balance of power.

Because David is a problem-causing landlord, HSP in this instance should have proceeded better to have helped Audrey decide not to compromise as easily and to have been more suggestive that she use GBLs. Although this may press them up against their values of being non-prescriptive, in cases like this, it may be a more appropriate response.

An example of a match between the counseling-negotiation-mediation frame and the landlord/tenant relationship that widened the negotiation space

This landlord (Danny) has been living in conditions under which he has grown steadily more frustrated. It has been a year now since he discovered that when his tenant (Cheryl) left her kitchen garbage out on her porch and in the front hallway in open paper bags from which rubbish leaked out, he would soon afterwards receive an onslaught of rodents and cockroaches who crawled up into his kitchen. Furthermore, because Cheryl also let her baby's diapers regularly go loose in the house making a mess that

leaked into the hallway, Danny became upset as the smells were too unbearable. He at first acted kindly to Cheryl by gently requesting that she 'be more careful', and he exterminated both his unit and hers. These creatures began to reappear regularly, however, tracked back to her garbage. He exterminated a second and a third time; at each juncture he acted a bit more authoritatively to induce her to 'be more careful'.

Dannys' requests for Cheryl to turn down her stereo after 11 PM and to keep her loud parties under reasonable control also went unheeded. After the police arrived one night to arrest her friend for excessive drinking at one of them, Danny requested that she be more careful, yet this behavior became worse until one night a man smashed a chair through her top floor window. At one point as well, Cheryl became irregular in paying her rent. One month she gave only one half; the next month she made it up but gave only three quarters more, and so on. Because she never fell more than one month behind at any one point, Danny reasoned that this problem was not significant enough on which to begin the eviction process.

Each time after Danny had come down to talk with Cheryl to make an agreement in which she would improve her garbage handling, keep the noise level down and generally be more considerate, she did not follow through. In response to his next visit and request, Cheryl snapped back: "I have rights you know, so don't you try evicting me because I'll sue you and make it too difficult." Because the behavior issues had become too significant by this point, Danny felt he had no choice but to evict.

Danny believed he would never be able to win by charging her on grounds of nuisance. He also felt unable to communicate that not resolving them was threatening her tenure because he thought he could never win this legally and she'd begin to threaten him back in response. Instead, he decided to notify her that he would be enacting a series of rent increases over a period of time "because he couldn't afford not to given the costs to provide housing," as he told her.

In response, Cheryl defiantly refused to pay the rent the next month, and Danny then served her notice to quit. Cheryl became quite anxious that she might get evicted. She also became vindictive and began to research her rights, which made Danny become anxious in response. Danny then thought it would be better to go to mediation because he believed they could confront their issues better.

As the mediation session began, it became quite clear that this intersection of behavioral and financial issues had escalated the dispute. The mediator learned also that Danny was hoping he would not have to evict but Danny knew privately that if he couldn't resolve the behavioral issues, he would raise the rent and hope she would eventually leave or provide sufficient grounds for him to become able to win an eviction case. He needed more confidence than what she had previously provided by her promises if he was to remain flexible.

In the mediation session, Cheryl realized what was at stake. She began to 'take seriously' that if she didn't honor the requests made by her landlord, she could very well be evicted.

For Cheryl to be able to respond, HSP believed, she might need to learn new skills -- mothering skills, managing in the kitchen etc. -- which they could begin to teach her, although on a limited basis.

Because Danny and Cheryl became able to structure an agreement -- in which Cheryl would make specific changes regarding her sanitary and other domestic practises, he became confident that things could and would improve. Danny also agreed to not raise the rent for some time until needed, to call her first before paying visits to her unit, and to agree to an arrangement where Cheryl could repay the back rent owed over a period of eight (8) months.

Because Danny was able go only so far as to ask Cheryl to 'be more careful' for fear of her return threats, they could not address the issues that most seriously threatened tenure. Dannys' plans to raise the rent were the only way he could call attention to his needs and maybe to evict if necessary although he hoped not to have to. It was the counselors' and mediators' skills at surfacing underlying issues, defining the problem and facilitating an improved understanding between the parties that increased the negotiating room; the parties themselves were clearly not able to constructively confront the main issues without this.

The process thus worked to enable each party to get what they wanted. For Cheryl, this meant staying housed and being treated respectfully when Danny had requests of her. For Danny,

when the mediator told him that she had expressed that she does feel bad about his frustrations, wants things to be better and is willing to make changes -- and, she helped to construct an agreement to honor this, he regained his confidence.

CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

A. Conclusion

Despite the Commonwealth's success in increasing the supply of new affordable housing units, we have witnessed a steady decrease in the overall affordable housing supply throughout the '80's. Although tenants' abilities to protect their interests have become more equalized in recent years due to new statutes and the rise of organizations like GBLS, a rising housing market along with declining incomes among low income renters have widened the income gap, which has dramatically reduced the negotiating room between landlords and tenants.

To close this income gap, we must help either tenants to generate more income or landlords to charge less rent, if possible. Using the 'stabilizing forces' existing within their relationship -- court as a "last resort," being helpful to build trust, not alienating the 'nice' landlords 'who care', others -- will also serve to widen it. When it is the landlord's problem-causing behavior primarily that is increasing this gap, however, GBLS must defend these tenants and deter other problem-causing landlords as well. When it is a tenant's family, behavioral, substance abuse and other problems that is threatening joint tenure, however, these tenants will need more than to just be well-defended if they are to be able to restabilize.

The HSP can be successful in uncovering this intersection of underlying behavioral issues and rent -- which must both be addressed -- in order to preserve joint tenure. HSP is currently

limited, though, to be able to help tenants to become and remain stable under the new agreements they make in mediation -- which may significantly increase the negotiating room between landlords and tenants. If HSP staff combine the activities of two roles -- to be both a caseworker who helps tenants to tie into services; and a probation officer who monitors tenants' progress, sets limits, and coordinates with other service providers when necessary -- into an improved 'stabilization' strategy, they may significantly increase the landlord's willingness and ability to extend himself further with tenants.

If it is this intersection of the tenants' financial or behavioral issues rather than the problem-causing behavior of landlords that is the primary threat to joint tenure, then providing full legal representation to these tenants is only a partial response. Defending only tenants in such a way that dual-purpose landlords cannot protect their basic interests may provide tenants with short term relief, but may be likely to provoke these landlords to -- withdraw any remaining flexibility, try to evict again as soon as possible, possibly to make their unit unaffordable, and altogether to leave the tenant in worse condition than before they 'defended'.

Unless we also protect the interests of these dual-purpose landlords, we will lose their motivation to continue providing affordable housing that will result in less affordable housing and more homelessness. Specifically, GBLS must do some screening in order to not represent problem tenants and must restrict their intervention to be descriptive rather than prescriptive when the

landlord may reduce his flexibility in response.

I present below a series of five (5) sets of conclusions and recommendations for how to improve the conditions for joint tenure between landlords and tenants. For many of these recommendations, we will need to secure funding in order to accomplish them. Rather than to restrict what I am recommending because funding is so limited, I have chosen instead simply to state most completely what I think. How to decide from among these recommendations which ones are the priorities and how to secure funds both remain as challenges.

B. Recommendations for how to improve the conditions for joint tenure between landlords and tenants

SERIES #1. GENERAL NEEDS FOR LANDLORDS AND TENANTS TO ENHANCE JOINT TENURE

Action #1:

HELP THE PARTIES TO MAXIMIZE THE BENEFITS THAT THE STABILIZING FORCES OF THEIR RELATIONSHIP MAY PROVIDE.

Recommendation

Both HSP and GBLs should increase their educational services to tenants and landlords for them to learn more about how to maximize the use of the stabilizing forces that exist. The knowledge that landlords and tenants should acquire is about the value that doing trust-building activities may have on preserving stability. The training would help them learn how to do the following:

- The tenant makes more effort to fix things.
- The tenant checks in intermittently with the landlord to see if he is 'sitting' on any problems that might escalate if they aren't addressed soon.
- The landlord checks in with tenant in similar fashion.
- The landlord offers for tenant to do work on property in exchange for rent when this is possible.

Action #2:

HELP THE PARTIES TO LEARN HOW BEST TO ENHANCE THE NEGOTIATING ROOM BETWEEN LANDLORDS AND TENANTS WHEREVER AND WHENEVER POSSIBLE

Recommendations:

1. Landlords and tenants must become better educated about the value of addressing disputes early. Many landlords claim that they are more willing to be flexible when they can surface what the underlying issues are and achieve resolutions as soon as possible. HSP should increase it's educational services to:

- a. educate landlords and tenants about the value of early intervention and
- b. encourage them to take part in early intervention.

There is a risk to encouraging this. That is, problem-causing landlords may use this 'advance knowledge' to move more effectively toward evicting the tenant. My simple response is that the power of the HSP-type of counseling process is to work with the parties in order for them not to use information for manipulative purposes. This area must be explored further, though.

2. A clause should be inserted into landlord/tenant leases that obligates them to attempt mediation/negotiation as a first

step to resolve disputes.

3. HSP, GBLS and others should educate landlords and tenants (either as part of their professional interventions or generally) in the following areas:

- Negotiation skills: Will help them manage their differences throughout the tenancy and when instability occurs.

- Legal Rights: When landlords understand their legal rights, they will more likely be able to extend themselves, as they know how to defend themselves if necessary. When tenants understand their legal rights, they can increase their bargaining power both in negotiation and in court.

- (For tenants): In a variety of skills (sanitation practices, parenting, money management, etc). This will tie into the role HSP plays and their coordination with the state.

4. HSP and GBLS should help the parties to explore alternative income generating measures in order to widen the negotiation space. I am not referring to the more traditional 'house improvements in exchange for rent' measures that landlords and tenants already employ. I am referring to a wider range of in-kind services; babysitting for the landlord's kids, doing his shopping, raising a garden, or other measures that may be of tangible help to the landlord.

SERIES #2: RECOMMENDATIONS FOR ENABLING GREATER BOSTON LEGAL SERVICES BETTER TO WORK TOWARDS JOINT TENURE OF LANDLORDS AND TENANTS

Action #1:

RESTRICT THE ROLE OF GBLS IN SUPPORTING "PROBLEM-CAUSING TENANTS"

Recommendations:

1. GBLS must inform themselves about who their client is in order to make a reasonable determination about if he or she is a problem-causing tenant. They can research the client's court record, job history, housing history, social service history etc. To do this, they may call sources who have had contact with them. I acknowledge that this is a very difficult issue in which to find a solution given the nature of the legal process. I encourage GBLS to give some thought to exploring what are the obstacles to doing such a thing, and what kind of a strategy might be feasible.

2. When they determine that they do have such a problem-causing tenant, they should restrict their involvement to an HSP-type role rather than to exercise full litigation powers. This should involve only educating tenants about the law but not representing them or advising them about strategy. This would resemble HSP quite closely.

Action #2; TO INCREASE ACCESS BY PROBLEM-BECOMING TENANTS TO GBLS WHEN THEY FACE PROBLEM-CAUSING LANDLORDS

Action #3; GBLS SHOULD PLAY A ROLE SIMILAR TO GBLS WHEN USING A FULL LEGAL DEFENSE STRATEGY WILL LIKELY CAUSE DUAL-PURPOSE LANDLORDS TO WITHDRAW THEIR FLEXIBILITIES AND DECIDE IMMEDIATELY TO EVICT THEIR TENANTS

Recommendations: To determine in advance that GBLS may cause this to occur, GBLS should:

- a. Inform themselves either through first- or secondhand sources about the landlord's position and on what bases will they withdraw their commitment to the tenant.
- b. Discuss with HSP if their counseling/mediation

intervention may be more appropriate.

c. Fully inform tenant about their knowledge of predic table responses by the landlords to their litigation activity.

Action #4: GBLS SHOULD MODIFY IT'S PRO SE KIT IN ORDER FOR TENANTS TO VIEW IT ALSO AS 'DESCRIPTIVE' AS WELL AS 'PRE-SCRIPTIVE'

Currently, GBLS's pro se (self-help) kit 'prescribes' what tenants 'should' do. Their original statement -- "If you [the tenant] are faced with an eviction,.... to fight it, you need to have a defense -- avoids making the distinction between when -- a landlord is extending himself but needs some reciprocity; and when the landlord has drawn the line and sees no option but to evict. To the extent that the tenant isn't educated to determine what they could do to preserve their landlord's flexibility before defending, they will eliminate the possibility of the landlord 'remaining flexible' earlier than may be best for them. Therefore, the Pro Se kit should include a discussion that helps tenants think about other resolution options than invoking the law in their defense.

SERIES #3: RECOMMENDATIONS FOR ENABLING HSP BETTER TO WORK TOWARD JOINT TENURE

Action #1: TO DO ONGOING TRAINING TO ENSURE THAT STAFF REMAIN TRAINED TO BE ABLE TO PROTECT THE DEFENSES AND RIGHTS OF BOTH PARTIES AS PART OF THE COUNSELING AND MEDIATION PROCESS.

Action #2: HSP SHOULD INCREASE AND EXPAND IT'S MONITORING ROLE TO INCLUDE "STABILIZATION" SERVICES

Mediated agreements often require one or both parties to make significant changes in their behavior. Tenants may need to learn how to manage money quite differently in order to make sure

that they can keep enough aside to be able to pay on the 10th of each month, for example. Landlords too must learn how to restrain from barging into their tenants' units each time they want to show the unit to a prospective renter. If HSP had monitored agreements beyond making the perfunctory follow up phone call, landlords commented, this might have further increased their confidence in the process.

If HSP staff were able to follow up not merely to monitor the agreements but to help to keep tenants stable in order to be able to adhere to them, I infer from the landlords' comments, these landlords would have been more willing both to -- first construct and enter into the agreements, and then to remain committed to them -- rather than to 'stay on the alert to run to their legal defenses' at the first negative signal.

Tri-CAP HSP staff acknowledged that they have not been able to do much follow up with their clients. A counselor told me: "We have time to do about one phone call a month or two after the mediation, but beyond that we're just not equipped." This counselor used to assume that 'no news was good news', as she told me: "I used to believe that if they didn't call me back after resolution that things are OK but I know now I can't assume that." Overall, I believe that if HSP both increased and expanded its role within the follow up phase, landlords would be more willing and able to be flexible and to preserve negotiating room in the future.

I present two alternative models. One comes from the Department of Public Welfare (DPW) where Jeanne Gould works with

tenants who have most recently been homeless but have just been placed into housing. The other comes from Quincy's rent grievance board whose director, Jane Reikard, works mostly with middle income tenants. I will use these two to illustrate how HSP might increase and expand their activities of follow-up.

Jeanne Gould of DPW's Housing Division:

As a "stabilization specialist" working with DPW's Housing division, Jeanne helps clients who have recently been homeless to remain stable in their new housing. Representing both landlords and tenants, Jeanne mediates or negotiates, when asked by the parties, to help them to achieve agreements. Like HSP, she will coordinate with the tenant's public benefits manager; for example, Jeanne may get the landlord to 'buy in' to the agreement in exchange for the tenant agreeing to go onto protected payments.

Yet beyond what HSP is able to do (except on a limited basis), Jeanne helps to keep tenants stable. Although she does this with landlords, she works mostly with tenants both to make sure they have what they need to be able to comply and to monitor them to make sure they comply.

"When the dispute involves behavioral issues that reflect skills which the tenant may be lacking," Jeanne told me, "I will suggest to the tenant: 'would you agree to see a counselor, receive a homemaker to help you learn housekeeping skills or other type services? Tying these tenants into these services will enable them to adhere better to their mediation agreements which will help landlords to sustain their confidence in the entire process. When tenants need more support, Jeanne may even join up with DSS homeless stabilization workers to pay regular visits. 'Sometimes the deal I've made with DSS is that they visit one week (to do counseling) then I visit the next and we'll go on like this for 3 months.'" Jeanne thus works quite intensively with the tenants to help them overcome their resistance to using services. Jeanne thus helps them to become able to manage themselves and their relationships to landlords.

Her second role is to monitor them closely to make sure that they comply. When a tenant needs to be pushed, (after the landlord has called Jeanne to explain why the agreement is not working), Jeanne will send them registered letters to state quite clearly the "risks" tenants face if they don't comply. If the tenant doesn't respond to her second registered letter and furthermore resists receiving her phone calls or a further visit, Jeanne may then request that the tenant's public assistance case manager invite her to her next meeting with the tenant in order to address the issue with the tenant face-to-face. "I respect

what the difficulties for you are," she will tell them, but she'll state the facts about the threat of eviction and offer more encouragement.

How far can Jeanne 'push' to induce tenants to comply? "I don't use force," she told me, but "I state the facts and provide incentives." "Because my low income tenants depend on rent subsidies, I tell them they have to change their behavior if they want to keep them, but I can't force this," Jeanne told me. Jeanne will warn them that it will be very difficult to be able to get a subsidy re-issued to them if they've been evicted. The only thing we can cancel their benefits for however, Jeanne told me, is when they don't report their income or they're not feeding their children or paying the rent."

"I've dealt with 400 tenants over the last couple years and I only have a handful I'm still dealing with and I've had only 2 evictions," Jeanne told me.

Jane Reikard of Quincy's Rent Grievance Board;

Whereas Quincy's HSP (A program of Quincy Community Action Program) works with low income tenants, Jane Reikard works with middle income along with low income tenants. Jane works primarily on an independent basis with landlords and tenants yet she uses her board to resolve disputes when necessary.

Most of Jane's work is on the phone. Similar to HSP, she will educate parties about their rights, help them explore options and work towards achieving resolutions in which both landlords and tenants are satisfied. But different than HSP, Jane will be more of an advocate for each party -- a 'broker' of agreements. To help a tenant who "can't pay the rent, doesn't want to leave and has no place to go," Jane tells me, she'll call the landlord and tell him "this is a mission of mercy. Someone in my office just can't pay the rent right now, they expect to be working a month from now, and it will be another week before they can pay you, what can you do to help me."

Having been at this for 12 years, Jane's earned the respect of her landlords. Hence they cooperate, she tells me, because they trust that she knows how to get tenants to comply. "OK Jane I'll agree to carry them, maybe for three months, and after that I expect to see some money," Jane tells me they tell her. "I would never have been able to do anything for the tenants all these years if I didn't have this cooperation," Jane believes.

So Jane must also work hard with the tenants to make sure they comply. "I can't help you unless you're willing to cooperate with me by doing something to help yourself," Jane tells them, "because I'm not going to go to the landlord to ask him to carry them unless there is any promise of something for him down the line." Hence Jane works closely with her tenants, to make

most certain they hold to their promises. Jane understands her limits and will cease helping tenants who don't help themselves. Different than HSP, though, Jane has built up a cooperative relationship over many years among Quincy's landlords such that they will extend further to tenants, trusting her abilities to get tenants to comply, which she works hard to make happen.

The steps that Reikard and Gould take to be both case managers and probation officers provide two variations on the stabilization theme. When their services work well, landlords gain more faith that tenants will be able to comply with their agreements, and tenants receive the additional support that is needed for them to be able to do so.

The HSP worker could also begin to include these 'stabilization' services as part of their job description. She or he would begin to work with the tenants both as caseworker -- tying them into services, and as probation officer -- monitoring their progress. Once an agreement is reached where the tenant must improve domestic practices, pay the rent on the 10th, keep the noise down, etc. the HSP worker would work intensively with the tenant to both tie him into services and monitor him for compliance. The HSP worker could also coordinate between the tenant and public assistance case managers just as Gould 'coordinates' with the tenant and his. If this tenant refuses to receive the worker's assistance, he may meet the worker in the public assistance office (given that the tenant is on public assistance).

Action #3 HSP STAFF SHOULD INCLUDE AN ADVOCATIVE COMPONENT TO PROVIDE A 'CARROT' TO MOTIVATE TENANTS TO INCREASE THEIR EFFORTS AND ABILITY TO MEET THEIR MEDIATION AGREEMENTS.

The HSP worker may also function more like an advocate between the tenant and this case manager, I will suggest, which is a more intensive role than to coordinate. This advocacy role is based on the concept which the state is considering employing, called 'mandatory institutional services'. Under this scheme, the tenant's public benefits will be extended based on a review of the client's progress in which approval is conditional. If the tenant has not met baseline expectations of the state, extensions will be granted in conjunction with the tenant joining into a mandatory service plan and/or having received a sound recommendation from the tenant's DSS worker -- who has 'contracted' with the tenant in order to be his advocate for extensions. In exchange, the tenant must meet particular goals established jointly with his social worker. The DSS worker may use this power as a 'carrot' to entice the tenant to push herself harder to start using and benefitting from the self-help skill trainings.

39. A good example of how the state would apply this is in their procedures for granting extensions for homeless hotel/motel (H/M) dwellers. Currently, a tenant in the hotels or motels may fairly easily get an extension of their Emergency Assistance (EA) benefits to allow them to stay longer than the initial 90 day period, says Judy Reilly (Assistant Deputy Commissioner of DSS). Although the conditions within the hotels and motels are rough, for some it may represent a positive step of independence from their families and they do get to be housed, albeit substandardly.

Because it is so difficult for the state to be able to get them out eventually let alone to help them get out of their poverty and dependency cycles, it is considering turning the decision about 'extending these benefits' into more of a process in which the tenant will 'contract' with their DSS worker in order to get extensions. For example; if the family, who has

(Continuation of 39) gotten housing search, has been turned down for four apartments, then the extension of their benefits will be coupled with mandatory participation in a service plan that includes continued housing search. The DSS worker could also play a mediatory role between the H/M dweller and the state; 'If you work with me -- services, monitoring etc.' -- the DSS worker tells the client, I'll vouch for you to get your 90 day period extended'.

This is a tricky public policy issue. Although some argue that judiciously applying some of these limits are in the client's best interests, you run the risk of being criticized for 'dictating what's in their best interests. "Are you putting people at the beginning of a shoot which they have no ability to control simply by allowing them to enter the H/M's?" Reilly questions, "especially if they are pleased, even after having been homeless for 6 months that they now don't have to fight with their mother."

Within the HSP domain, we could give the HSP worker this same power -- to be able to advocate that the tenant get his/her benefits extended -- as a carrot to entice these tenants to push themselves harder. In exchange for receiving positive recommendations, tenants will agree, for example, to increase their participation in self-help services, (which has become necessary for them to do in order to meet their mediation agreements). The HSP worker could measure the tenant's compliance here both by charting his/her progress in increasing his/her participation in services as well as by monitoring the landlord's changing confidence level in the tenant.

Action #4: HSP MAY HELP THE PARTIES TO EMPLOY ALTERNATIVE INCOME-GENERATING MEASURES TO WIDEN THE NEGOTIATING ROOM.

Given that the state will very likely be cutting back significantly on the number of Chapter 707 vouchers issued in FY '90, HSP workers will be able to use them to preserve joint tenure on even fewer occasions than currently. As a result, a much larger

number of these tenants will face 'unbridgeable' income gaps -- unless the tenant can significantly increase his income, or be able to resolve other very intractable issues -- in order to offset the income gap.

It becomes harder thus for GBLs -- when they successfully defend tenants against eviction without the use of a subsidy -- to stop the landlord from "ducking" (McCreight) in response. As an alternative income-generating strategy, tenants may be able to put the 'interdependencies' within their relationship to even greater use. As an example, the tenant could convince the landlord to be willing to use the tenant's inkind services -- maintaining the property, washing his car, doing the landlord's shopping, babysitting etc. -- in lieu of some of the rent. The HSP worker may be more able to help landlords and tenants to choose this arrangement through the skills they employ of surfacing underlying issues, feelings and beliefs. If the HSP worker is skillful enough as a counselor with the landlord -- listening, validating, helping him to sort through thoughts and feelings etc. -- what may surface is a strong remaining desire on the landlord's part to preserve joint tenure. When the landlord realizes this, he will increase his open-ness to discovering or inventing the means by which he may continue to extend himself to the tenant and remain stable.

SERIES #4. A RECOMMENDATION FOR IMPROVING COORDINATION BETWEEN LOCAL LEVEL OFFICES (HSP AND GBLs) AND STATE LEVEL ON THE ADMINISTRATION OF DISTRIBUTION OF 707 RENTAL ASSISTANCE CERTIFICATES

A suggestion for a process of distributing the 'prevention' certificates (for "at-risk" tenants)

The state is also planning to shift more of the existing vouchers into the 'prevention' category -- to be issued to "at-risk" tenants (at risk of being evicted unless they resolve financial and other issues) rather than to the "homeless." The state must first resolve the issue of what type of eligibility system to establish. As an example, should the state give these prevention certificates to those 'more well-off' "at-risk" families who they know will be most likely to stay housed if they receive it? -- a result of which would be to 'cut off' those who are least likely to make it. Or, should the state give them to those 'least well-off' "at-risk" families who are most likely to end up being evicted unless they get the subsidy? -- a result of which would be to prevent the 'more well-off' tenants from moving away from being "at-risk."

To allocate these 'prevention' certificates among those "at-risk" thus is a more complicated process than to allocate them to the "homeless." Although the "homeless" qualifiers still face a limited number of subsidies, the 'status' of their need is ⁴⁰ more clear according to the state's criteria for allocation.

40. This is one reason why the system was established in this fashion. The state first decided that entering into the "homeless" category increased your priority status in relation to the "at-risk" categories. Although placing the vouchers in the "homelessness" category might 'induce tenants to become homeless' in order to obtain one, (or create the conditions in which to qualify without having to leave the unit), it did enable the state to have a more 'clear' reason or standard in which to qualify someone for eligibility.

As an effect of this complication, HSP regional offices (who are among a number of agencies that have power on the local level to secure vouchers for their clients) will face a new set of issues about how to decide the number of these certificate which each office will be allocated. The state's criteria will be less 'clear' as to who should get the "at-risk" vouchers than when the client is "homeless." These offices will then become more compelled to advocate at the state level in order to convince them that their "at-risk" tenants are of a higher priority status -- than those from another's office -- in order to 'win' the most certificates for their office.

These offices will also become more competitive within themselves in order to determine for whom among their "at-risk" candidates they should advocate. To improve this system of allocation, I am suggesting, the regional HSP offices should adapt the following negotiation model.

The regional office representatives should meet together with the state Rental Assistance program administration on a monthly basis to work more collaboratively to apportion the vouchers across the different programs. Each office would bring their lists of eligible recipients to this meeting. As a group, they may decide on a criteria system for apportioning across the offices that will weigh in factors such as what the relative severities are of the homelessness problem in each region. By opening up this and other issues across which the parties could trade -- shifting staff across the regions when specific short term needs arise, exchanging information, letting landlords or tenants who need immediate assistance to cross-register for

another office's workshops, etc. This may serve to reduce the positional bargaining that could likely take place and replace it with a negotiation process where the joint gains are greater, and the cooperation across offices increase.

SERIES #5. RECOMMENDATIONS FOR FURTHER RESEARCH

Further research should be done in the following areas:

- A. Disputing patterns among landlords and tenants who practice self-help to resolve disputes. (who are not using professional services).
- B. How many disputes are falling into each category along the continuum of dispute resolution methods? How many landlords and tenants use each category?
- C. How to improve current dispute resolution methods
 - When it's most appropriate to use which one.
 - How to coordinate their use with state-level activities.
 - In particular with HSP, how to increase it's monitoring activities.

APPENDIX A: LIST OF INTERVIEWEES BY CATEGORY;

LANDLORDS; I INTERVIEWED 14 LANDLORDS

TENANTS; I INTERVIEWED 10 TENANTS

PROFESSIONALS;

Housing Services Program;

1. Josh Jacks: Mediator for Tri-CAP
2. Helena Chaikins: Client Services Advocate for Tri-CAP
3. Carol Burner: Landlord counselor and coordinator for Tri-CAP
4. Sarah Parker: Former Landlord counselor and coordinator (CAP)
5. Grace McKinnon: HSP coordinator: Chelsea HSP
6. Sandra Hawes: Statewide coordinator for HSP
7. Ann Hurley: Tenant Counselor for Quincy CAP
8. Nancy Callanan: Director of HSP for Quincy CAP
9. Rosemary Wahlberg: Executive Director for Quincy CAP

Greater Boston Legal Services

1. Dick Bauer: Staff Attorney: Quincy GBLS
2. Wyn Gerhard: Staff Attorney: Greater Boston Elder Services
3. Jay Rose: Staff attorney: GBLS
4. Linda Garcia: Paralegal: GBLS
5. Shorter conversations with a range of others

City Officials

1. Rose : Secretary for Building Inspection Dept.: City of Quincy
2. Joe Prondak: Building Inspector: City of Quincy
3. Jane Reikard: Coordinator of Rent Grievance Board: City of Quincy
4. Jack Hall: Manager within the Rent Equity Board: City of Boston
5. Becky Stevens: Assistant Director of Housing; BRA (Boston Redevelopment Authority)

State Officials

1. Judy Reilly: Assistant Deputy Commissioner: DSS
2. Carol Johnson: Director of Homelessness Services: DMH
3. Irene Lee: Homelessness Coordinator for EOHS (Executive Office of Human Services)
4. Rufus Phillips: Research Director for MHFA (Massachusetts Housing Finance Agency)
5. Jeanne Gould: Homeless Stabilization Worker for Department of Public Welfare.

Non-Profit Advocates

1. Michael Fogelsberg: Associate Director: Massachusetts Tenants Organization
2. Lew Finfer: Director of MAHA: Massachusetts Affordable Housing Alliance

Trade Associations

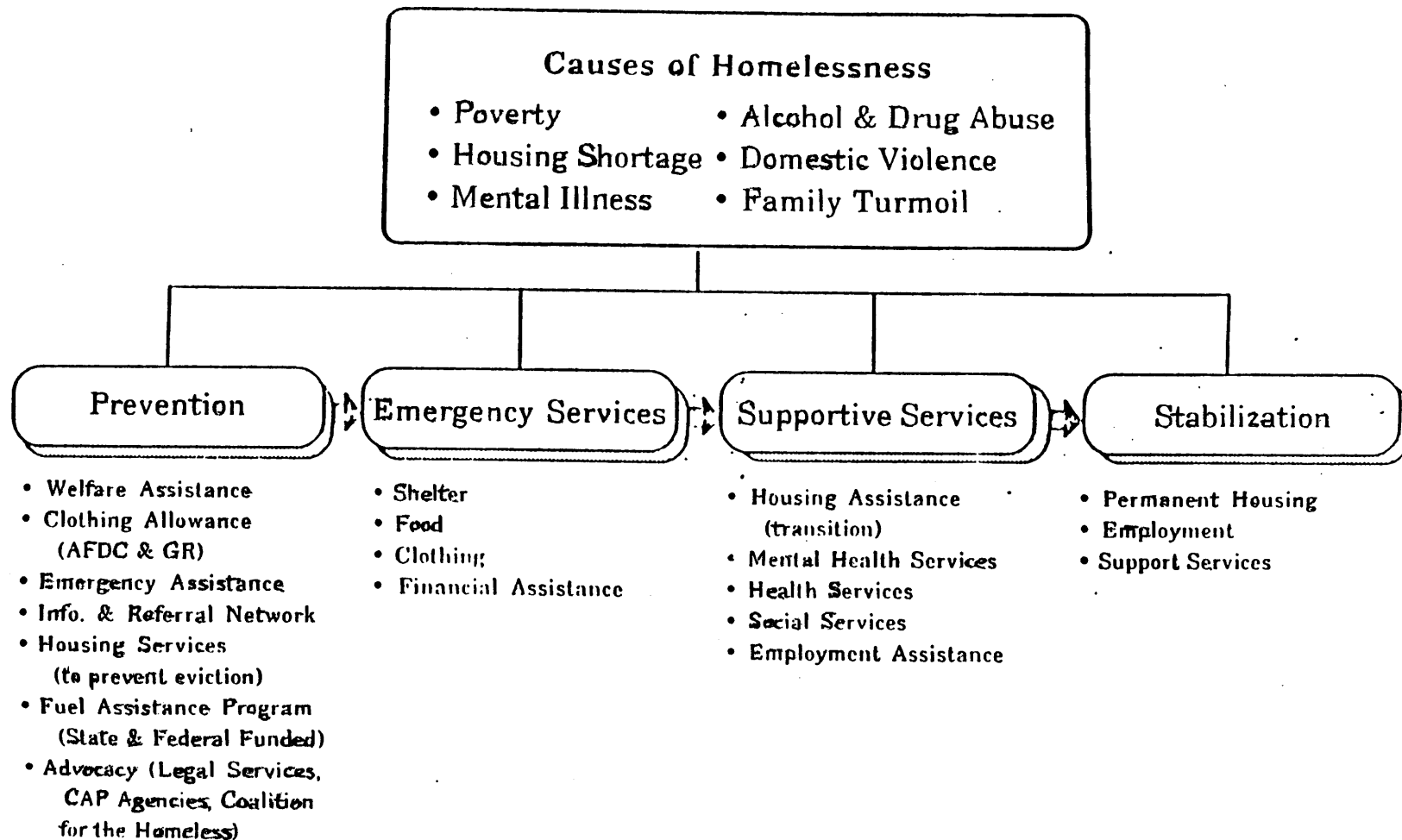
1. Ed Shanahan: Managing Director for the Rental Housing Association for the Greater Boston Real Estate Board

Private Consultants

1. Rolf Goetz: Consultant to BRA

The Massachusetts Approach to Homelessness

A Continuum of Services



141.

Figure 1

Developed by:
Nancy K. Kaufman
E.O.H.S.
11/85

BIBLIOGRAPHY

Books

1. Abel, Richard L. (Editor). The Politics of Informal Justice Volume #'s 1 & 2. NY, NY: Academic Press, 1982
2. Krohn, Roger G.; Fleming, Berkeley; and Manzer, Marilyn. The Other Economy: The Internal Logic of Local Rental Housing Toronto, Canada. Peter Martin Associates, 1977
3. Lempert, Richard; Sanders, Joseph. An Invitation to Law and Social Science. NY and London; Longman Inc. 1986
4. Massachusetts Chapter of the National Lawyers Guild. Legal Tactics: Self-Defense for Tenants in Massachusetts. Boston: (Published by); The Massachusetts Poverty Law Center, 1987
6. Schon, Donald A. The Reflective Practitioner; How Professionals Think in Action. NY; Basic Books, 1983
7. Schon, Donald A. Educating the Reflective Practitioner; Toward a New Design for Teaching and Learning in the Professions. NY: Basic Books, 1987
8. Snyder, Mitch; Hombs, Mary Ellen. Homelessness in America: A Forced March to Nowhere. Washington, DC.: (Published by): The Community for Creative Non-Violence, 1982
9. Stegman, Michael A. Housing Investment in the Inner City: The Dynamics of Decline: A study of Baltimore, MD. 1968-1970 Cambridge, MA.; The MIT Press, 1972
10. Sternlieb, George; Hughes, James W. The Future of Rental Housing. New Brunswick, NJ; Center for Urban Policy Research, 1981
11. Fisher, Roger; Ury, William. Getting to Yes: Negotiating Agreement Without Giving In. Boston; Houghton Mifflin Company 1981

Papers, Reports and Articles

1. Baumgartner, M.P. "Law and the Middle Class: Evidence from a Suburban Town," (paper was presented at the Annual Meeting of the Law and Society Association, Madison, Wisconsin, June, 1980
2. Buckle, Suzann Thomas-, Buckle Leonard. "Varieties of Informal Processing in American Neighborhoods; Some Lessons for Judicial Reform," (Non-Published)
3. Executive Office of Human Services. "Homeless Families in Massachusetts Progress and Action," January 1987

4. Executive Office of Human Services. "Massachusetts Report on Homelessness," (Report Prepared for EOHS by Carol Bower Johnson of Brigandi & Johnson Associates, Consultants on Homelessness. Boston, MA.)
5. Felstiner, William L.F.; Abel, Richard L.; Sarat, Austin. "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming," in Law and Society Review, Vol 15, pg. 631
6. Galanter, Marc. "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," Journal of Legal Pluralism, Number 19/1981, pp. 1-47
7. Houseman, Alan W. "Legal Services and Equal Justice for the Poor: Some thought on our future." NLADA. Volume 35: Nov. 77
8. Johnson, Carol Bower; "State Coordination of Mental Health Services to Homeless People in Massachusetts." (Paper delivered to a Policy Conference sponsored by the U.S. Advisory Commission on Intergovernmental Relations
9. Johnston, Philip W.; Dukakis, Michael S. "Comprehensive Homeless Assistance Plan 2." (Submitted to Mr. Robert L. Paquin, Deputy Director of the Office of Community Planning and Development, Boston, MA.)
10. Katz, Jack; "Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problem in the Legal Services Program." in Law And Society Review, Vol 12: pg. 275; Winter 1978
11. Kaufman, Nancy. "Massachusetts: A Comprehensive Policy Approach to Homelessness." (Presented to the Committee on Health Services Research; American Public Health Association)
12. Keyes, Langley. "Problem People in Public Housing." (Unpublished Draft)
13. Ladinsky, Jack. "The Traffic in Legal Services: Lawyer-Seeing Behavior and the Channeling of Clients." in Law and Society Review. Vol. 21: pg. 207:
14. Merry, Sally Engle "Concepts of Law and Justice Among Working-Class Americans: Ideology as Culture," in Legal Studies Forum, Vol. IX, No. 1 (1985)
15. Merry, Sally Engle. "Everyday Understandings of the Law in Working-Class America," in American Ethnographer, 1985
16. Merry, Sally Engle. "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," in Law and Society Review, Vol. 134, pg. 891